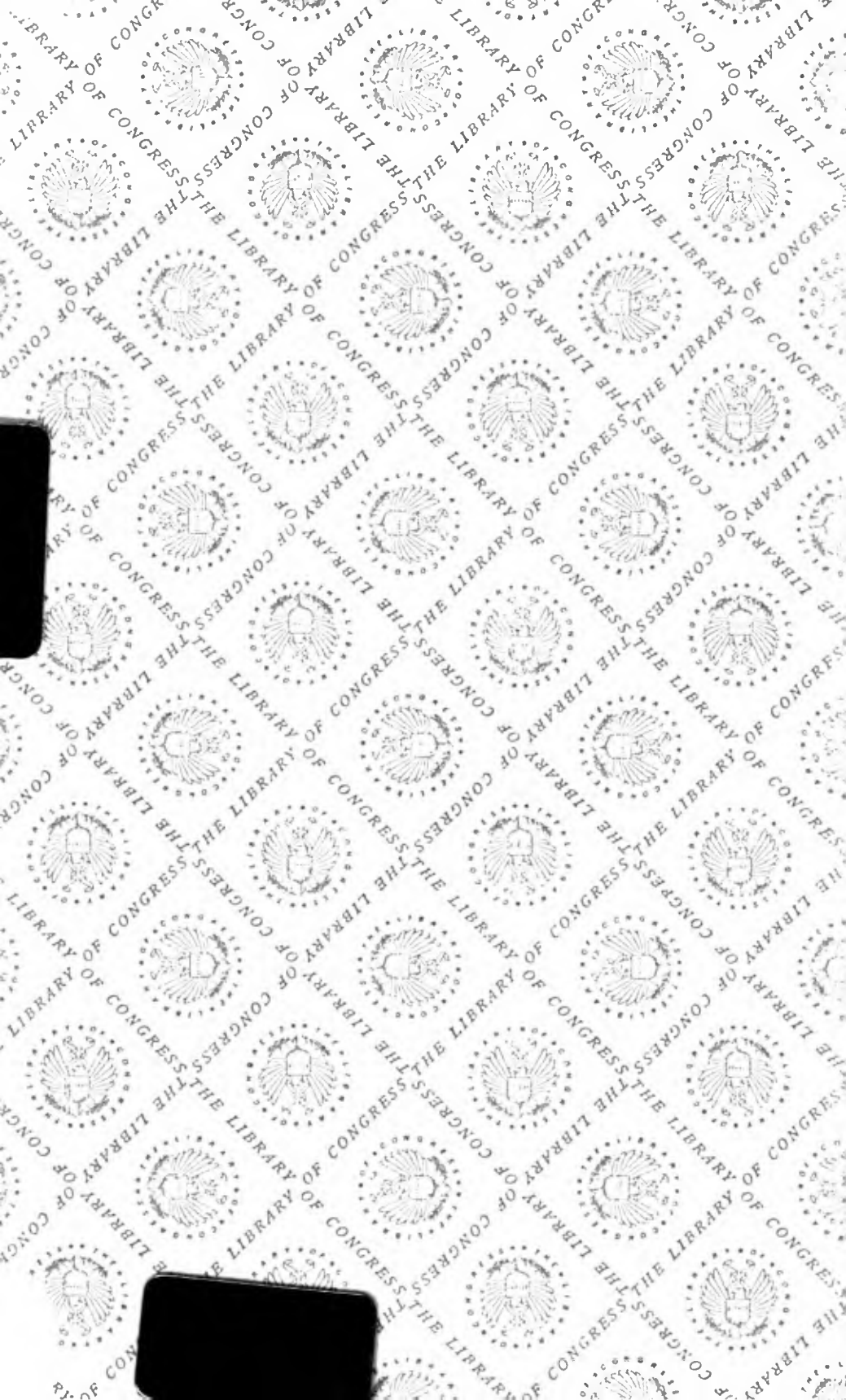
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FEDERAL CONSTRUCTION CONTRACTS

HEARINGS

BEFORE

SUBCOMMITTEE NO. 2

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH CONGRESS

FIRST SESSION

ON

H. R. 3241, H. R. 3339, H. R. 3340, H. R. 3810, H. R. 4313

TO PRESCRIBE THE POLICY AND PROCEDURE IN CONNECTION WITH CONSTRUCTION CONTRACTS MADE BY EXECUTIVE AGENCIES

MARCH 20, 27, AND 28, 1957

Printed for the use of the Committee on the Judiciary

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FEDERAL CONSTRUCTION CONTRACTS

WEDNESDAY, MARCH 20, 1957

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 2 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 10:30 a. m., in room 327, House Office Building, Hon. Thomas J. Lane (chairman of the subcommittee) presiding.

Present: Representatives Lane, Forrester, Donohue, Boyle, Poff, and Cramer.

Also present: Cyril F. Brickfield, counsel.

Mr. LANE. The committee will kindly come to order.

This hearing is called for the purpose of considering a group of bills, H. R. 3241, H. R. 3339, H. R. 3340, H. R. 3810, and H. R. 4313, to prescribe the policy and procedure in connection with construction contracts made by executive agencies.

(The bills referred to follow:)

[H. R. 3241, 85th Cong., 1st sess.]

A BILL To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Construction Contract Procedures Act".

(b) It appears desirable, and in the best interests of the Federal Government, for the Federal Government in contracting for the construction of buildings to use the single contract system of procurement under which the general contractor is solely responsible to the Government for completion and has undivided responsibility therefor and full control and authority to coordinate and complete, but that such system should include procedures under which the subcontracts for the mechanical specialty work involved should be finalized as far as practicable prior to the submission of the prime bids or proposals to give the Government the full benefit of competitive subcontract prices, as well as maximum efficiency in performance, and that such procedures should be so established as to eliminate the unfair trade practice of bid shopping by general contractors or subcontractors and other unfair trade practices in connection with bidding on Federal works.

SEC. 2. (a) Each executive agency shall list in the bidding or contract documents, relating to each lump-sum construction contract before accepting bids or proposals with respect thereto, each major category of mechanical specialty work involved in the performance thereof.

(b) No executive agency shall award to or enter into a lump-sum construction contract with any general contractor unless the name of the contractor, with whom the general contractor will contract for the performance of each major category of mechanical specialty work involved which may have been listed by the contracting executive agency in the bidding or contract documents, has been specified by the general contractor in the bid or proposal upon which the contract is awarded or made: *Provided*, That with respect to any such category the general contractor may, in lieu of listing the name of such contractor, give the executive agency as part of his bid or proposal a written statement: (1) stating that

he has made an effort to secure subbids for such category; (2) setting forth that at least five days (Saturdays, Sundays and Federal holidays excepted) prior to the date for submission of bids or proposals he requested subcontract bids from not less than three responsible subcontractors; (3) listing the names of all subcontractors from whom he has requested or received subcontract bids or proposals; and (4) stating that he received no definite, complete and responsive bid from any contractor for such category: *Provided further*, That in the event a general contractor shall submit such a statement in lieu of listing the name of a contractor, he shall, within five days (Saturdays, Sundays and Federal holidays excepted) of the date of the opening of the bids, notify the executive agency in writing of the name of the contractor with whom he will contract for the performance of such category.

(c) This section shall not prevent any general contractor from himself performing any major category of mechanical specialty work under a lump-sum construction contract awarded to or undertaken by him if the bid or proposal referred to in subsection (b) of this section states that the general contractor is able to and intends to perform such major category of mechanical specialty work himself.

(d) This section shall not be construed to forbid or prevent any executive agency from awarding several prime or direct lump-sum construction contracts for any one construction project, where because of special circumstances or because of the nature of the project this would be desirable.

(e) No general contractor under a lump-sum construction contract shall contract to have any major category of mechanical specialty work, involved in the performance of such construction contract as listed by the contracting executive agency in the bidding or contract documents, performed by any person other than the person named for the performance of such work in accordance with subsection (b) or (c) of this section, except in accordance with the provisions of subsections (f), (g) or (h) of this section.

(f) A general contractor who submits a bid with respect to a lump-sum construction contract to be awarded on a competitive bid basis may, at any time within five days (Saturdays, Sundays and Federal holidays excepted) of the date of the opening of the bids therefor, engage a substitute or different contractor from the one named in accordance with subsection (b) to perform any major category of mechanical specialty work: *Provided*, That within such period he notifies the contracting executive agency in writing of the name of the substitute contractor.

(g) If a contractor named by the general contractor under a lump-sum construction contract in accordance with subsection (b) of this section shall refuse to enter into a contract in accordance with his subbid therefor or shall fail or refuse to post a performance bond which was to be furnished under the terms of the subbid or shall fail or refuse to perform or complete the work to be performed by him in accordance with the terms of his subcontract therefor or if such contractor shall be disqualified or be determined to be unqualified to perform such work by or under any applicable Federal statute or any Federal governmental order, ruling or determination, the general contractor at any time may engage a substitute or different contractor to perform such work: *Provided*, That he first notifies the contracting executive agency in writing of the name of the substitute contractor.

(h) If for any reason not specified in subsection (g) and after the expiration of the period referred to in subsection (f) and after the award of the contract to him, a general contractor under a lump-sum construction contract prefers to have any major category of mechanical specialty work on the project covered by such construction contract, as to which he has named a contractor under subsection (b) hereof, performed by a contractor other than the one named in accordance with said subsection (b) the general contractor may engage such substitute contractor if prior to such change (1) the general contractor submits to the contracting executive agency in writing the name of the substitute contractor and such information as the contracting executive agency may request as to any change in cost to the general contractor involved in the proposed change in contractors; and (2) the total contract price to the satisfaction of the contracting executive agency is adjusted by the net difference in cost in the event such substitution results in a lower cost to the general contractor.

(i) This Act shall not apply to the following proposed construction contracts:

(1) Proposed contracts to be performed outside the continental limits of the United States which limits shall be deemed to include Alaska.

(2) Proposed contracts which are estimated by the contracting executive agency to involve less than $100,000.

(3) Any proposed contract with specific reference to which a chief officer responsible for procurement of the executive agency which is to award the contract determines that the procedure prescribed herein would result in undue delay and that the public exigency or military necessity will not admit of such delay.

SEC. 3. For the purposes of this Act—

(1) The term "executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(2) The term "construction contract" means any contract entered into by any executive agency for the erection, repair, moving, remodeling, modification, or alteration of any building or structure upon real estate intended for shelter or comfort, or for production, processing, or travel, including without being limited to, buildings, bridges and tunnels but not including highways, aqueducts, reservoirs, dams, irrigation and regional water supply projects, flood control projects, water power development projects, jetties and breakwaters or the buildings or structures incident to or included in the contract for such excluded projects.

(3) The term "mechanical specialty work" in connection with a construction contract means all plumbing, heating, piping, air conditioning, refrigerating, ventilating, and electrical work, including but not being limited to the furnishing and installation of sewer, drainage and water supply piping and plumbing, heating, piping, air conditioning, refrigerating, ventilating and electrical materials, equipment and fixtures.

(4) The term "major category of mechanical specialty work involved" means, with respect to a particular project, those general categories of mechanical speciality work for which a general contractor normally would let a direct subcontract in view of the type of project and the geographic area involved.

(5) The term "general contractor" means a person having a direct contractual relationship with an executive agency for the performance of a construction contract.

(6) The term "person" means an individual, corporation, partnership, association, or other organized group of persons. All references to contractor or general contractor shall include individuals, corporations, partnerships, associations, or other organized groups of persons who are contractors or general contractors.

(7) The term "lump-sum construction contract" means a construction contract, whether awarded after bid or negotiated, under which the price is fixed or to be fixed by any method other than the cost-plus-a-fixed-fee method.

SEC. 4. (a) Neither this Act nor compliance with the provisions thereof shall be construed to create any privity of contract between the United States Government, or any agency thereof, and any contractor submitting a bid to or contracting with the general contractor under any construction contract or give any such contractor any cause of action against the United States or any of its agencies.

(b) Nothing contained in this Act shall be construed to limit or diminish any rights or remedies which the United States or any agency thereof may have against the general contractor arising out of the construction contract, or to relieve the general contractor of any responsibility for performance of the construction contract because of any action taken by the United States or any agency thereof under any provisions of this Act.

(c) Nothing in this Act contained shall be construed to prevent any executive agency from requiring, in its discretion, approval or acceptance by it of contractors engaged or to be engaged by any general contractor on a construction contract or from making any other requirements it deems advisable, in its discretion, with respect to contractors engaged or to be engaged by general contractors on any construction contract or from requiring any information it deems advisable, in its discretion, as to the cost of performance of any construction contract, nor shall the imposition of such requirements give rise to any case of action against the United States or its agencies by the general contractor or by any contractors engaged or to be engaged by the general contractor.

(d) Nothing contained in this Act shall in itself be construed to create any contract or property rights in any person.

[H. R. 3339, 85th Cong., 1st sess.]

A BILL To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (a) That this Act may be cited as the "Federal Construction Contract Procedures Act".

(b) It appears desirable, and in the best interests of the Federal Government, for the Federal Government in contracting for the construction of buildings to use the single contract system of procurement under which the general contractor is solely responsible to the Government for completion and has undivided responsibility therefor and full control and authority to coordinate and complete, but that such system should include procedures under which the subcontracts for the mechanical specialty work involved should be finalized as far as practicable prior to the submission of the prime bids or proposals to give the Government the full benefit of competitive subcontract prices, as well as maximum efficiency in performance, and that such procedures should be so established as to eliminate the unfair trade practice of bid shopping by general contractors or subcontractors and other unfair trade practices in connection with bidding on Federal works.

SEC. 2. (a) Each executive agency shall list in the bidding or contract documents, relating to each lump-sum construction contract before accepting bids or proposals with respect thereto, each major category of mechanical specialty work involved in the performance thereof.

(b) No executive agency shall award to or enter into a lump-sum construction contract with any general contractor unless the name of the contractor, with whom the general contractor will contract for the performance of each major category of mechanical specialty work involved which may have been listed by the contracting executive agency in the bidding or contract documents, has been specified by the general contractor in the bid or proposal upon which the contract is awarded or made: *Provided*, That with respect to any such category the general contractor may, in lieu of listing the name of such contractor, give the executive agency as part of his bid or proposal a written statement: (1) stating that he has made an effort to secure subbids for such category; (2) setting forth that at least five days (Saturdays, Sundays, and Federal holidays excepted) prior to the date for submission of bids or proposals he requested subcontract bids from not less than three responsible subcontractors; (3) listing the names of all subcontractors from whom he has requested or received subcontract bids or proposals; and (4) stating that he received no definite, complete and responsive bid from any contractor for such category: *Provided further*, That in the event a general contractor shall submit such a statement in lieu of listing the name of a contractor, he shall, within five days (Saturdays, Sundays, and Federal holidays excepted) of the date of the opening of the bids, notify the executive agency in writing of the name of the contractor with whom he will contract for the performance of such category.

(c) This section shall not prevent any general contractor from himself performing any major category of mechanical specialty work under a lump-sum construction contract awarded to or undertaken by him if the bid or proposal referred to in subsection (b) of this section states that the general contractor is able to and intends to perform such major category of mechanical specialty work himself.

(d) This section shall not be construed to forbid or prevent any executive agency from awarding several prime or direct lump-sum construction contracts for any one construction project, where because of special circumstances or because of the nature of the project this would be desirable.

(e) No general contractor under a lump-sum construction contract shall contract to have any major category of mechanical specialty work, involved in the performance of such construction contract as listed by the contracting executive agency in the bidding or contract documents, performed by any person other than the person named for the performance of such work in accordance with subsection (b) or (c) of this section, except in accordance with the provisions of subsection (f), (g) or (h) of this section.

(f) A general contractor who submits a bid with respect to a lump-sum construction contract to be awarded on a competitive-bid basis may, at any time within five days (Saturdays, Sundays, and Federal holidays excepted) of the date of the opening of the bids therefor, engage a substitute or different contractor from the one named in accordance with subsection (b) to perform any

major category of mechanical specialty work: *Provided*, That within such period he notifies the contracting executive agency in writing of the name of the substitute contractor.

(g) If a contractor named by the general contractor under a lump-sum construction contract in accordance with subsection (b) of this section shall refuse to enter into a contract in accordance with his subbid therefor or shall fail or refuse to post a performance bond which was to be furnished under the terms of the subbid or shall fail or refuse to perform or complete the work to be performed by him in accordance with the terms of his subcontract therefor or if such contractor shall be disqualified or be determined to be unqualified to perform such work by or under any applicable Federal statute or any Federal governmental order, ruling, or determination, the general contractor at any time may engage a substitute or different contractor to perform such work: *Provided*, That he first notifies the contracting executive agency in writing of the name of the substitute contractor.

(h) If for any reason not specified in subsection (g) and after the expiration of the period referred to in subsection (f) and after the award of the contract to him, a general contractor under a lump-sum construction contract prefers to have any major category of mechanical specialty work on the project covered by such construction contract, as to which he has named a contractor under subsection (b) hereof, performed by a contractor other than the one named in accordance with said subsection (b) the general contractor may engage such substitute contractor if prior to such change (1) the general contractor submits to the contracting executive agency in writing the name of the substitute contractor and such information as the contracting executive agency may request as to any change in cost to the general contractor involved in the proposed change in contractors; and (2) the total contract price to the satisfaction of the contracting executive agency is adjusted by the net difference in cost in the event such substitution results in a lower cost to the general contractor.

(i) This Act shall not apply to the following proposed construction contracts:

(1) Proposed contracts to be performed outside the continental limits of the United States which limits shall be deemed to include Alaska.

(2) Proposed contracts which are estimated by the contracting executive agency to involve less than $100,000.

(3) Any proposed contract with specific reference to which a chief officer responsible for procurement of the executive agency which is to award the contract determines that the procedure prescribed herein would result in undue delay and that the public exigency or military necessity will not admit of such delay.

SEC. 3. For the purposes of this Act—

(1) The term "executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(2) The term "construction contract" means any contract entered into by any executive branch for the erection, repair, moving, remodeling, modification, or alteration of any building or structure upon real estate intended for shelter or comfort, or for production, processing, or travel, including without being limited to, buildings, bridges and tunnels but not including highways, aqueducts, reservoirs, dams, irrigation and regional water supply projects, flood control projects, water power development projects, jetties and breakwaters or the buildings or structures incident to or included in the contract for such excluded projects.

(3) The term "mechanical specialty work" in connection with a construction contract means all plumbing, heating, piping, air conditioning, refrigerating, ventilating, and electrical work, including but not being limited to the furnishing and installation of sewer, drainage and water supply piping and plumbing, heating, piping, air conditioning, refrigerating, ventilating and electrical materials, equipment and fixtures.

(4) The term "major category of mechanical specialty work involved" means, with respect to a particular project, those general categories of mechanical specialty work for which a general contractor normally would let a direct subcontract in view of the type of project and the geographic area involved.

(5) The term "general contractor" means a person having a direct contractual relationship with an executive agency for the performance of a construction contract.

(6) The term "person" means an individual, corporation, partnership, association, or other organized group of persons. All references to contractor or general contractor shall include individuals, corporations, partnerships, associations,

or other organized group of persons who are contractors or general contractors.

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SEC. 4. (a) Neither this Act nor compliance with the provisions thereof shall be construed to create any privity of contract between the United States Government, or any agency thereof, and any contractor submitting a bid to or contracting with the general contractor under any construction contract or give any such contractor any cause of action against the United States or any of its agencies.

(b) Nothing contained in this Act shall be construed to limit or diminish any rights or remedies which the United States or any agency thereof may have against the general contractor arising out of the construction contract, or to relieve the general contractor of any responsibility for performance of the construction contract because of any action taken by the United States or any agency thereof under any provisions of this Act.

(c) Nothing in this Act contained shall be construed to prevent any executive agency from requiring, in its discretion, approval or acceptance by it of contractors engaged or to be engaged by any general contractor on a construction contract or from making any other requirements it deems advisable, in its discretion, with respect to contractors engaged or to be engaged by general contractors on any construction contract or from requiring any information it deems advisable, in its discretion, as to the cost of performance of any construction contract, nor shall the imposition of such requirements give rise to any cause of action against the United States or its agencies by the general contractor or by any contractors engaged or to be engaged by the general contractor.

(d) Nothing contained in this Act shall in itself be construed to create any contract or property rights in any person.

[H. R. 3340, 85th Cong., 1st sess.]

A BILL To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (a) That this Act may be cited as the "Federal Construction Contract Procedures Act".

(b) It appears desirable, and in the best interests of the Federal Government, for the Federal Government in contracting for the construction of buildings to use the single contract system of procurement under which the general contractor is solely responsible to the Government for completion and has undivided responsibility therefor and full control and authority to coordinate and complete, but that such system should include procedures under which the subcontracts for the mechanical specialty work involved should be finalized as far as practicable prior to the submission of the prime bids or proposals to give the Government the full benefit of competitive subcontract prices, as well as maximum efficiency in performance, and that such procedures should be so established as to eliminate the unfair trade practice of bid shopping by general contractors or subcontractors and other unfair trade practices in connection with bidding on Federal works.

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(c) This section shall not prevent any general contractor from himself performing any major category of mechanical specialty work under a lump-sum construction contract awarded to or undertaken by him if the bid or proposal referred to in subsection (b) of this section states that the general contractor is able to and intends to perform such major category of mechanical specialty work himself.

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(f) A general contractor who submits a bid with respect to a lump-sum construction contract to be awarded on a competitive-bid basis may, at any time within five days (Saturdays, Sundays, and Federal holidays excepted) of the date of the opening of the bids therefor, engage a substitute or different contractor from the one named in accordance with subsection (b) to perform any major category of mechanical specialty work: *Provided*, That within such period he notifies the contracting executive agency in writing of the name of the substitute contractor.

(g) If a contractor named by the general contractor under a lump-sum construction contract in accordance with subsection (b) of this section shall refuse to enter into a contract in accordance with his subbid therefor or shall fail or refuse to post a performance bond which was to be furnished under the terms of the subbid or shall fail or refuse to perform or complete the work to be performed by him in accordance with the terms of his subcontract therefor or if such contractor shall be disqualified or be determined to be unqualified to perform such work by or under any applicable Federal statute or any Federal governmental order, ruling, or determination, the general contractor at any time may engage a substitute or different contractor to perform such work: *Provided*, That he first notifies the contracting executive agency in writing of the name of the substitute contractor.

(h) If for any reason not specified in subsection (g) and after the expiration of the period referred to in subsection (f) and after the award of the contract to him, a general contractor under a lump-sum construction contract prefers to have any major category of mechanical specialty work on the project covered by such construction contract, as to which he has named a contractor under subsection (b) hereof, performed by a contractor other than the one named in accordance with said subsection (b) the general contractor may engage such substitute contractor if prior to such change (1) the general contractor submits to the contracting executive agency in writing the name of the substitute contractor and such information as the contracting executive agency may request as to any change in cost to the general contractor involved in the proposed change in contractors; and (2) the total contract price to the satisfaction of the contracting executive agency is adjusted by the net difference in cost in the event such substitution results in a lower cost to the general contractor.

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and that the public exigency or military necessity will not admit of such delay.

SEC. 3. For the purposes of this Act—

(1) The term "executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(2) The term "construction contract" means any contract entered into by any executive agency for the erection, repair, moving, remodeling, modification, or alteration of any building or structure upon real estate intended for shelter or comfort, or for production, processing, or travel, including without being limited to, buildings, bridges and tunnels but not including highways, aqueducts, reservoirs, dams, irrigation and regional water supply projects, flood control projects, water power development projects, jetties and breakwaters or the buildings or structures incident to or included in the contract for such excluded projects.

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(4) The term "major category of mechanical specialty work involved" means, with respect to a particular project, those general categories of mechanical specialty work for which a general contractor normally would let a direct subcontract in view of the type of project and the geographic area involved.

(5) The term "general contractor" means a person having a direct contractual relationship with an executive agency for the performance of a construction contract.

(6) The term "person" means an individual, corporation, partnership, association, or other organized group of persons. All references to contractor or general contractor shall include individuals, corporations, partnerships, associations, or other organized group of persons who are contractors or general contractors.

(7) The term "lump-sum construction contract" means a construction contract, whether awarded after bid or negotiated, under which the price is fixed or to be fixed by any method other than the cost-plus-a-fixed-fee method.

SEC. 4. (a) Neither this Act nor compliance with the provisions thereof shall be construed to create any privity of contract between the United States Government, or any agency thereof, and any contractor submitting a bid to or contracting with the general contractor under any construction contract or give any such contractor any cause of action against the United States or any of its agencies.

(b) Nothing contained in this Act shall be construed to limit or diminish any rights or remedies which the United States or any agency thereof may have against the general contractor arising out of the construction contract, or to relieve the general contractor of any responsibility for performance of the construction contract because of any action taken by the United States or any agency thereof under any provisions of this Act.

(c) Nothing in this Act contained shall be construed to prevent any executive agency from requiring, in its discretion, approval or acceptance by it of contractors engaged or to be engaged by any general contractor on a construction contract or from making any other requirements it deems advisable, in its discretion, with respect to contractors engaged or to be engaged by general contractors on any construction contract or from requiring any information it deems advisable, in its discretion, as to the cost of performance of any construction contract, nor shall the imposition of such requirements give rise to any cause of action against the United States or its agencies by the general contractor or by any contractors engaged or to be engaged by the general contractor.

(d) Nothing contained in this Act shall in itself be construed to create any contract or property rights in any person.

[H. R. 3810, 85th Cong., 1st sess.]

A BILL To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Construction Contract Procedures Act."

(b) It appears desirable, and in the best interests of the Federal Government, for the Federal Government in contracting for the construction of buildings to use the single contract system of procurement under which the general contractor is solely responsible to the Government for completion and has undivided responsibility therefor and full control and authority to coordinate and complete but that such system should include procedures under which the sub-contracts for the mechanical specialty work involved should be finalized as far as practicable prior to the submission of the prime bids or proposals to give the Government the full benefit of competitive subcontract prices, as well as maximum efficiency in performance, and that such procedures should be so established as to eliminate the unfair trade practice of bid shopping by general contractors or subcontractors and other unfair trade practices in connection with bidding on Federal works.

SEC. 2. (a) Each executive agency shall list in the bidding or contract documents, relating to each lump-sum construction contract before accepting bids or proposals with respect thereto, each major category of mechanical specialty work involved in the performance thereof.

(b) No executive agency shall award to or enter into a lump-sum construction contract with any general contractor unless the name of the contractor, with whom the general contractor will contract for the performance of each major category of mechanical specialty work involved which may have been listed by the contracting executive agency in the bidding or contract documents, has been specified by the general contractor in the bid or proposal upon which the contract is awarded or made: *Provided*, That with respect to any such category the general contractor may, in lieu of listing the name of such contractor, give the executive agency as part of his bid or proposal a written statement: (1) stating that he has made an effort to secure subbids for such category; (2) setting forth that at least five days (Saturdays, Sundays, and Federal holidays excepted) prior to the date for submission of bids or proposals he requested subcontract bids from not less than three responsible subcontractors; (3) listing the names of all subcontractors from whom he has requested or received subcontract bids or proposals; and (4) stating that he received no definite, complete, and responsive bid from any contractor for such category: *Provided further*, That in the event a general contractor shall submit such a statement in lieu of listing the name of a contractor, he shall, within five days (Saturdays, Sundays, and Federal holidays excepted) of the date of the opening of the bids, notify the executive agency in writing of the name of the contractor with whom he will contract for the performance of such category.

(c) This section shall not prevent any general contractor from himself performing any major category of mechanical specialty work under a lump-sum construction contract awarded to or undertaken by him if the bid or proposal referred to in subsection (b) of this section states that the general contractor is able to and intends to perform such major category of mechanical specialty work himself.

(d) This section shall not be construed to forbid or prevent any executive agency from awarding several prime or direct lump-sum construction contracts for any one construction project, where because of special circumstances or because of the nature of the project this would be desirable.

(e) No general contractor under a lump-sum construction contract shall contract to have any major category of mechanical specialty work, involved in the performance of such construction contract as listed by the contracting executive agency in the bidding or contract documents, performed by any person other than the person named for the performance of such work in accordance with subsection (b) or (c) of this section, except in accordance with the provisions of subsection (f), (g) or (h) of this section.

(f) A general contractor who submits a bid with respect to a lump-sum construction contract to be awarded on a competitive bid basis may, at any time within five days (Saturdays, Sundays, and Federal holidays excepted) of the date of the opening of the bids therefor, engage a substitute or different contractor from the one named in accordance with subsection (b) to perform any major category of mechanical specialty work: *Provided*, That within such period he notifies the contracting executive agency in writing of the name of the substitute contractor.

(g) If a contractor named by the general contractor under a lump-sum construction contract in accordance with subsection (b) of this section shall refuse to enter into a contract in accordance with his subbid therefor or shall fail or

refuse to post a performance bond which was to be furnished under the terms of the subbid or shall fail or refuse to perform or complete the work to be performed by him in accordance with the terms of his subcontract therefor or if such contractor shall be disqualified or be determined to be unqualified to perform such work by or under any applicable Federal statute or any Federal governmental order, ruling, or determination, the general contractor at any time may engage a substitute or different contractor to perform such work: *Provided*, That he first notifies the contracting executive agency in writing of the name of the substitute contractor.

(h) If for any reason not specified in subsection (g) and after the expiration of the period referred to in subsection (f) and after the award of the contract to him, a general contractor under a lump-sum construction contract prefers to have any major category of mechanical specialty work on the project covered by such construction contract, as to which he has named a contractor under subsection (b) hereof, performed by a contractor other than the one named in accordance with said subsection (b) the general contractor may engage such substitute contractor if prior to such change (1) the general contractor submits to the contracting executive agency in writing the name of the substitute contractor and such information as the contracting executive agency may request as to any change in cost to the general contractor involved in the proposed change in contractors; and (2) the total contract price to the satisfaction of the contracting executive agency is adjusted by the net difference in cost in the event such substitution results in a lower cost to the general contractor.

(i) This Act shall not apply to the following proposed construction contracts:

(1) Proposed contracts to be performed outside the continental limits of the United States which limits shall be deemed to include Alaska.

(2) Proposed contracts which are estimated by the contracting executive agency to involve less than $100,000.

(3) Any proposed contract with specific reference to which a chief officer responsible for procurement of the executive agency which is to award the contract determines that the procedure prescribed herein would result in undue delay and that the public exigency or military necessity will not admit of such delay.

SEC. 3. For the purposes of this Act—

(1) The term "executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(2) The term "contruction contract" means any contract entered into by any executive agency for the erection, repair, moving, remodeling, modification, or alteration of any building or structure upon real estate intended for shelter or comfort, or for production, processing, or travel, including without being limited to, buildings, bridges, and tunnels but not including highways, aqueducts, reservoirs, dams, irrigation and regional water supply projects, flood-control projects, water power development projects, jetties and breakwaters or the buildings or structures incident to or included in the contract for such excluded projects.

(3) The term "mechanical specialty work" in connection with a construction contract means all plumbing, heating, piping, air conditioning, refrigerating, ventilating, and electrical work, including but not being limited to the furnishing and installation of sewer, drainage, and water supply piping and plumbing, heating, piping, air conditioning, refrigerating, ventilating and electrical materials, equipment and fixtures.

(4) The term "major category of mechanical specialty work involved" means, with respect to a particular project, those general categories of mechanical specialty work for which a general contractor normally would let a direct subcontract in view of the type of project and the geographic area involved.

(5) The term "general contractor" means a person having a direct contractual relationship with an executive agency for the performance of a construction contract.

(6) The term "person" means an individual, corporation, partnership, association, or other organized group of persons. All references to contractor or general contractor shall include individuals, corporations, partnerships, associations, or other organized groups of persons who are contractors or general contractors.

(7) The term "lump-sum construction contract" means a construction contract, whether awarded after bid or negotiated, under which the price is fixed or to be fixed by any method other than the cost-plus-a-fixed-fee method.

SEC. 4. (a) Neither this Act nor compliance with the provisions thereof shall be construed to create any privity of contract between the United States Government, or any agency thereof, and any contractor submitting a bid to or con-

tracting with the general contractor under any construction contract or give any such contractor any cause of action against the United States or any of its agencies.

(b) Nothing contained in this Act shall be construed to limit or diminish any rights or remedies which the United States or any agency thereof may have against the general contractor arising out of the construction contract, or to relieve the general contractor of any responsibility for performance of the construction contract because of any action taken by the United States or any agency thereof under any provisions of this Act.

(c) Nothing in this Act contained shall be construed to prevent any executive agency from requiring, in its discretion, approval or acceptance by it of contractors engaged or to be engaged by any general contractor on a construction contract or from making any other requirements it seems advisable, in its discretion, with respect to contractors engaged or to be engaged by general contractors on any construction contract or from requiring any information it deems advisable, in its discretion, as to the cost of performance of any construction contract, nor shall the imposition of such requirements give rise to any cause of action against the United States or its agencies by the general contractor or by any contractors engaged or to be engaged by the general contractor.

(d) Nothing contained in this Act shall in itself be construed to create any contract or property rights in any person.

[H. R. 4313, 85th Cong., 1st sess.]

A BILL To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Federal Construction Contract Procedures Act".

(b) It appears desirable, and in the best interests of the Federal Government, for the Federal Government in contracting for the construction of buildings to use the single contract system of procurement under which the general contractor is solely responsible to the Government for completion and has undivided responsibility therefor and full control and authority to coordinate and complete, but that such system should include procedures under which the subcontracts for the mechanical specialty work involved should be finalized as far as practicable prior to the submission of the prime bids or proposals to give the Government the full benefit of competitive subcontract prices, as well as maximum efficiency in performance, and that such procedures should be so established as to eliminate the unfair trade practice of bid shopping by general contractors or subcontractors and other unfair trade practices in connection with bidding on Federal works.

SEC. 2. (a) Each executive agency shall list in the bidding or contract documents, relating to each lump-sum construction contract before accepting bids or proposals with respect thereto, each major category of mechanical specialty work involved in the performance thereof.

(b) No executive agency shall award to or enter into a lump-sum construction contract with any general contractor unless the name of the contractor, with whom the general contractor will contract for the performance of each major category of mechanical specialty work involved which may have been listed by the contracting executive agency in the bidding or contract documents, has been specified by the general contractor in the bid or proposal upon which the contract is awarded or made: *Provided,* That with respect to any such category the general contractor may, in lieu of listing the name of such contractor, give the executive agency as part of his bid or proposal a written statement: (1) stating that he has made an effort to secure subbids for such category; (2) setting forth that at least five days (Saturdays, Sundays, and Federal holidays excepted) prior to the date for submission of bids or proposals he requested subcontract bids for not less than three responsible subcontractors; (3) listing the names of all subcontractors from whom he has requested or received subcontract bids or proposals; and (4) stating that he received no definite, complete, and responsive bid from any contractor for such category; and further provided that in the event a general contractor shall submit such a statement in lieu of listing the name of a contractor, he shall, within five days (Saturdays, Sundays, and Federal holidays excepted) of the date of the opening of the bids, notify the executive agency in writing of the name of the contractor with whom he will contract for the performance of such category.

(c) This section shall not prevent any general contractor from himself performing any major category of mechanical specialty work under a lump-sum construction contract awarded to or undertaken by him if the bid or proposal referred to in subsection (b) of this section states that the general contractor is able to and intends to perform such major category of mechanical specialty work himself.

(d) This section shall not be construed to forbid or prevent any executive agency from awarding several prime or direct lump-sum construction contracts for any one construction project, where because of special circumstances or because of the nature of the project this would be desirable.

(e) No general contractor under a lump-sum construction contract shall contract to have any major category of mechanical specialty work, involved in the performance of such construction contract as listed by the contracting executive agency in the bidding or contract documents, performed by any person other than the person named for the performance of such work in accordance with subsection (b) or (c) of this section, except in accordance with the provisions of subsections (f), (g), or (h) of this section.

(f) A general contractor who submits a bid with respect to a lump-sum construction contract to be awarded on a competitive bid basis may, at any time within five days (Saturdays, Sundays, and Federal holidays excepted) of the date of the opening of the bids therefor, engage a substitute or different contractor from the one named in accordance with subsection (b) to perform any major category of mechanical specialty work: *Provided*, That within such period he notifies the contracting executive agency in writing of the name of the substitute contractor.

(g) If a contractor named by the general contractor under a lump-sum construction contract in accordance with subsection (b) of this section shall refuse to enter into a contract in accordance with his subbid therefor or shall fail or refuse to post a performance bond which was to be furnished under the terms of the subbid or shall fail or refuse to perform or complete the work to be performed by him in accordance with the terms of his subcontract therefor of if such contractor shall be disqualified or be determined to be unqualified to perform such work by or under any applicable Federal statute or any federal governmental order, ruling or determination, the general contractor at any time may engage a substitute or different contractor to perform such work: *Provided*, That he first notifies the contracting executive agency in writing of the name of the substitute contractor.

(h) If for any reason not specified in subsection (g) and after the expiration of the period referred to in subsection (f) and after the award of the contract to him, a general contractor under a lump-sum construction contract prefers to have any major category of mechanical specialty work on the project covered by such construction contract, as to which he has named a contractor under subsection (b) hereof, performed by a contractor other than the one named in accordance with said subsection (b) the general contractor may engage such substitute contractor if prior to such change (1) the general contractor submits to the contracting executive agency in writing the name of the substitute contractor and such information as the contracting executive agency may request as to any change in cost to the general contractor invoived in the proposed change in contractors; and (2) the total contract price to the satisfaction of the contracting executive agency is adjusted by the net difference in cost in the event such substitution results in a lower cost to the general contractor.

(i) This Act shall not apply to the following proposed construction contracts:

(1) Proposed contracts to be performed outside the continental limits of the United States which limits shall be deemed to include Alaska.

(2) Proposed contracts which are estimated by the contracting executive agency to invoive less than $100,000.

(3) Any proposed contract with specific reference to which a chief officer responsible for procurement of the executive agency which is to award the contract determines that the procedure prescribed herein would result in undue delay and that the public exigency or military necessity will not admit of such delay.

SEC. 3. For the purposes of this Act—

(1) The term "executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(2) The term "construction contract" means any contract entered into by any executive agency for the erection, repair, moving, remodeling, modification, or alteration of any building or structure upon real estate intended for shelter or comfort, or for production, processing, or travel, including without being limited to, buildings, bridges and tunnels but not including highways, aqueducts, reservoirs, dams, irrigation and regional water supply projects, flood control projects, water power development projects, jetties and breakwaters or the buildings or structures incident to or included in the contract for such excluded projects.

(3) The term "mechanical specialty work" in connection with a construction contract means all pluming, heating, piping, air conditioning, refrigerating, ventilating, and electrical work, including but not being limited to the furnishing and installation of sewer, drainage and water supply piping and plumbing, heating, piping, air conditioning, refrigerating, ventilating and electrical materials, equipment and fixtures.

(4) The term "major category of mechanical specialty work involved" means, with respect to a particular project, those general categories of mechanical specialty work for which a general contractor normally would let a direct subcontract in view of the type of project and the geographic area involved.

(5) The term "general contractor" means a person having a direct contractual relationship with an executive agency for the performance of a construction contract.

(6) The term "person" means an individual, corporation, partnership, association, or other organized group of persons. All references to contractor or general contractor shall include individuals, corporations, partnerships, associations, or other organized groups of persons who are contractors or general contractors.

(7) The term "lump-sum construction contract" means a construction contract, whether awarded after bid or negotiated, under which the price is fixed or to be fixed by any method other than the cost-plus-a-fixed-fee method.

SEC. 4. (a) Neither this Act nor compliance with the provisions thereof shall be construed to create any privity of contract between the United States Government, or any agency thereof, and any contractor submitting a bid to or contracting with the general contractor under any construction contract or give any such contractor any cause of action against the United States or any of its agencies.

(b) Nothing contained in this Act shall be construed to limit or diminish any rights or remedies which the United States or any agency thereof may have against the general contractor arising out of the construction contract, or to relieve the general contractor of any responsibility for performance of the construction contract because of any action taken by the United States or any agency thereof under any provisions of this Act.

(c) Nothing in this Act contained shall be construed to prevent any executive agency from requiring, in its discretion, approval or acceptance by it of contractors engaged or to be engaged by any general contractor on a construction contract or from making any other requirements it deems advisable, in its discretion, with respect to contractors engaged or to be engaged by general contractors on any construction contract or from requiring any information it deems advisable, in its discretion, as to the cost of performance of any construction contract, nor shall the imposition of such requirements give rise to any cause of action against the United States or its agencies by the general contractor or by any contractors engaged or to be engaged by the general contractor.

Nothing contained in this Act shall in itself be construed to create any contract or property rights in any person.

Mr. LANE. Exhaustive hearings were held on this legislation last year. Everyone who sought an opportunity to be heard was accommodated. In addition, in the 83d Congress hearings were held jointly with a subcommittee of the Senate Judiciary Committee. In view of this circumstance, it is felt that the present hearing need not be extensive.

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While giving all sides ample opportunity to have their views presented, I nevertheless feel that the number of witnesses should be limited to 2 or 3 on behalf of the proponents of the bills, a similar number by the opponents and a similar number from the Government agencies.

In this way the committee will receive the various reasons in support of the particular views on this legislation, and at the same time eliminate testimony which would be redundant or cumulative. I hope that we will be able to complete the hearings within 2 days' time, namely today and tomorrow, March 21.

The instant legislation is designed to place the awarding of construction contracts on a more efficient basis so that Federal construction work may be accomplished at the lowest possible cost. The legislation is intended to eliminate or at least materially reduce the unfair trade practices of bid-shopping and bid-peddling in connection with Federal construction contracts.

The bills provide that the prime contractor on Federal lump-sum construction must state in his bid the names of the mechanical specialty contractors, if any, that he intends to engage to perform the mechanical specialty work.

In the event of default or disqualification of the mechanical specialty contractor named, the prime contractor may have the work done by a substitute contractor, and there are no restrictions on who he may engage, as long as he notifies the Government in writing of the name of the substitute.

A substitute mechanical specialty contractor may be engaged irrespective of default of the one originally named, providing the general contractor submits to the Government in writing the name of the substitute contractor and furnishes such information as the agency may request relative to any change in cost involved in the proposed substitute, and the total contract price is adjusted to the satisfaction of the Government by the net difference in cost in the event a lower cost results.

The provisions of the bills are not applicable to contracts performed outside of the United States and those of $100,000 or less, or in cases where the agency head determines that public exigency warrants waiver.

The legislation expressly provides that the listing of subcontractors creates no privity of contract between the subcontractor and the Government, nor does the legislation, per se, create any contract or property right between other persons.

The pending bills further provide that executive agencies of the Government are not to be prevented from making other conditions part of the contract when they deem it advisable.

Similar legislation passed the Senate unanimously in the last Congress and was favorably reported by this committee to the House. While it failed to pass the House, I might point out that it only failed by some 15 votes under a suspension of the rules, which requires a two-thirds majority for passage. While the legislation, therefore, was not successful in passing Congress, it nonetheless had the approval of a majority of both Houses of Congress.

It is my understanding that during the last congressional recess a committee of the Associated General Contractors sat down with representatives of the specialty and mechanical contractor organizations and ironed out the major objections which the Association of General Contractors had to the legislation in the form in which it existed last year.

There appears to have been a sincere attempt on the part of both these groups to meet the principal objections of the general contractor, as well as the Federal agencies.

The bill H. R. 3339, of which I am the author, and the bills H. R. 3340 by Mr. Miller of New York, H. R. 3241 by Mr. Madden, H. R. 3810 by Mr. Bray and H. R. 4313 by Mr. Wright, contain the provisions which were agreed upon by the representatives of the general contractors and the specialty contractors. It may be worthwhile at this time to point up the provisions which have been agreed upon.

These provisions, of course, contain the major differences between the legislation presently pending before this committee and the legislation which was considered by the Congress last year. The new proposals contain the following notable provisions:

1. They declare it to be in the best interest of the Government to use—

> the single contract system * * * under which the general contractor is solely responsible to the Government for completion and has undivided responsibility therefor and full control and authority to coordinate and complete—

building projects.

2. While calling for naming of mechanical specialty contractors, the new legislation permits the general contractor to change them without restriction within 5 working days after bid opening. It also permits the general contractor to change a subcontractor at any time if he fails to furnish a requested performance bond or to enter into a contract, or has defaulted or has been declared unqualified by the Government. Further, the legislation permits a change in subcontractors after a contract has been awarded, provided the general contractor accounts to the contracting agency for any savings in cost which may result.

3. The bills provide that nothing in this legislation will create any contract right or property right in any person. In other words, while the prime contractor and the subcontractor may contract between themselves and create certain contract rights, this legislation in and of itself and standing alone does not create any contract rights between the contracting parties.

I have here a detailed comparative analysis of the Federal construction contract bill—S. 1644, 84th Congress—which was acted upon last year, and the bills H. R. 3339, H. R. 3340, H. R. 3241, H. R. 3810, and H. R. 4313, which are presently under consideration by this subcommittee.

Without objection, I shall direct that the analysis be set out at this point in the record.

(The document referred to follows:)

COMPARATIVE ANALYSIS OF FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT (1957) AND FEDERAL CONSTRUCTION CONTRACT ACT, S. 1644 (1956)

FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT (1957)	FEDERAL CONSTRUCTION CONTRACT ACT, S. 1644 (1956)
Section 1	*Section 1*
(a) The word "procedures" added and reference to year deleted.	The word "procedures" not used and reference made to year "1956."
(b) It appears desirable and in the best interests of the Federal Government for it to use the single contract system in procuring building construction under which sole and undivided responsibility and full control and authority to coordinate and complete the project is in the general contractor. However, such system should include procedures under which the subcontracts for the mechanical specialty work are finalized prior to the submission of the prime bid so that the Government will receive the full benefit of competitive subcontract prices and maximum efficiency in performance while at the same time eliminating unfair trade practices in connection with bidding on Federal works, including the unfair trade practice of bid shopping by general contractors or subcontractors.	No provision.
Section 2	*Section 2*
(a) Executive agencies shall list in the bidding or contract documents on each lump-sum construction contract each major category of mechanical specialty work involved.	Same.
(b) No executive agency shall award a lump-sum construction contract unless the general contractor lists in his bid or proposal the name of each contractor with whom he will contract for the performance of each major category of mechanical specialty work, provided that instead of listing the name of such contractor in his bid the general contractor may submit as a part of his proposal a statement in writing: (1) that he made an effort to secure subbids for such category; (2) that he requested subcontract bids from not less than 3 responsible subcontractors at least 5 days (Saturdays, Sundays, and Federal holidays excepted) prior to the date for submission of bids; (3) listing the names of all subcontractors from whom he has requested or received subcontract proposals; (4) that he received no definite, complete, and responsive bid for such category. And provided further that if such a statement is submitted in lieu of listing the name of a subcontractor the general contractor must within 5 days (Saturdays, Sundays, and Federal holidays	Same, except no provisions (1), (2), (3) and (4) in lieu of subcontractor listing at the time of submission of the bid, and no provision requiring subsequent listing within 5 days of the opening of the bids.

COMPARATIVE ANALYSIS OF FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT (1957) AND FEDERAL CONSTRUCTION CONTRACT ACT, S. 1644 (1956)—Con.

FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT (1957)—continued	FEDERAL CONSTRUCTION CONTRACT ACT, S. 1644 (1956)—continued
excepted) of the opening of the bids, notify the executive agency in writing of the name of the contractor with whom he will contract for the performance of such major category of mechanical specialty work.	
(c) Any general contractor may perform any major category of mechanical specialty work under a lump-sum construction contract if he states in his bid in accordance with (b) above that he is able to and intends to perform such work himself.	Same, except there is no requirement that general contractor state he is "able to" perform such mechanical specialty work.
(d) Executive agencies are not prevented from awarding several prime or direct lump-sum contracts for any one project where special circumstances or the nature of the project make this desirable.	Same, except no reference made to "special circumstances" or "nature of the project."
(e) The general contractor shall have each major category of mechanical specialty work performed by the contractor named by him pursuant to (b) and (c) above except as provided in (f), (g) or (h) below.	Same, except does not contain provisions of new subsection (f).
(f) A general contractor on a competitive lump-sum construction contract may, at any time with 5 days (Saturdays, Sundays, and Federal holidays excepted) of the opening of the bids, engage a different mechanical specialty contractor simply by notifying the executive agency in writing within such period of the name of the substitute.	No provision.
	Section 2 (f)
(g) In the event of default by the mechanical specialty contractor named or if he fails or refuses to post a performance bond as required by the terms of the subcontract or if he is disqualified or determined to be unqualified to perform the work by virtue of any Federal order, ruling, or determination, a substitute subcontractor may be engaged providing only that the general contractor first notifies the contracting executive agency in writing of the name of the substitute.	Provides for substitution in the event of default provided contracting executive agency first notified in writing of the name of the substitute.
(h) Regardless of default ((g) above) and subsequent to the expiration of 5 days of the date of the opening of bids ((f) above), a substitute subcontractor may be engaged if the general contractor first submits to the contracting executive agency in writing the name of the substitute contractor and furnishes such information as the agency may request relative to any change in cost involved in the proposed change in contractor and the total contract price is adjusted to the satisfac-	(g) Same, except contracting executive agency must permit substitution in writing and any savings resulting from the substitution is credited to the Government against the amount due the general contractor under the contract.

COMPARATIVE ANALYSIS OF FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT (1957) AND FEDERAL CONSTRUCTION CONTRACT ACT, S. 1644 (1956)—Con.

FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT (1957)—continued	FEDERAL CONSTRUCTION CONTRACT ACT, S. 1644 (1956)—continued
tion of the Government by the net difference in cost in the event a lower cost results.	
(i) Act not applicable to proposed construction contracts: (1) to be performed outside the United States; (2) of $100,000 or less; (3) when a chief officer responsible for procurement in agency determines that public exigency or military necessity requires waiver.	(h) Same, except reference to "construction contracts" instead of "proposed construction contracts" and authority to waive requirements of act in the event "public exigency" requires resides in head of agency.
Section 3. Definitions	
(1) Executive agency: Any executive department or independent stablishment in the executive branch of the Government, including any wholly owned Government corporation.	Same.
(2) Construction contract: Any contract by an executive agency for the erection, repair, moving, remodeling, modification, or alteration of any structure upon real estate, including bridges and tunnels but not including highways, aqueducts, reservoirs, dams, irrigation and regional water supply projects, flood-control and water-development projects, jetties and breakwaters, or structures incident thereto.	Same, except highways are included within the definition of construction contract.
(3) Mechanical specialty work: All plumbing, heating, piping, air conditioning, refrigerating, ventilating, and electrical work, including but not being limited to the furnishing and installation of sewer, drainage, and water supply piping and plumbing, heating, piping, air conditioning, refrigerating, ventilating, aud elcctrical material, equipment, and fixtures.	Same.
(4) Major category of mechanical specialty work Involved: Those categories of mechanical specialty work for which a general contractor normaliy would let a direct subcontract In view of the type of project and the geographic area Involved.	No provision. However, matter covered in House committee report.
(5) General contractor: Persou having direct contractual relationship with an executive agency for the performance of a construction contract.	Same, except word "prime" used instead of word "general."
(6) Person: Individual, corporation, partnership, association, or other organized groups of persons. Reference to contractor or general contractor to include those within the definition of "person."	Same.
(7) Lump-sum construction contract: Construction contract whether awarded after bid or negotiated, under which the price is fixed or to be fixed by any method other than the cost-plus-a-fixed-fee method.	Same.

COMPARATIVE ANALYSIS OF FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT (1957) AND FEDERAL CONSTRUCTION CONTRACT ACT, S. 1644 (1956)—Con.

FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT (1957)—continued	FEDERAL CONSTRUCTION CONTRACT ACT, S. 1644 (1956)—continued
Section 4	
(a) No privity of contract created between the Goverment and any mechanical specialty contractor and hence no cause of action exists in favor of any mechanical specialty contractor against the Government.	Same.
(b) Nothing in act limits or diminishes the rights of the Government against the general contractor or relieves him of any responsibility for performance of the contract.	Same, except contains provision that permitting or denying substitution shall not relieve general contractor of any responsibility for performance. (No permission to change is required in new version as long as any money saving resulting from a change is adjusted to the satisfaction of the Government.)
(c) Executive agencies are not prevented from making other requirements with respect to subcontractors to be engaged by the general contractor or from requiring information deemed advisable relative to the cost of performance of any contract and any such requirements give no cause of action against the Government in favor either of the general contractor or the subcontractor.	Same, except does not contain additional safeguard in new bill that no such requirement shall give any cause of action against the United States in favor of a general or subcontractor.
(d) Nothing in act of itself creates any contract right or any property right in any person.	No provision.

Mr. LANE. It is my understanding that the first witness on our list of witnesses today is one of the petitioners for this legislation, a former member of this committee, and who is now serving on another subcommittee of the Committee on the Judiciary.

He is anxious to go to his subcommittee to attend the hearings before that subcommittee in the full Judiciary Committee room, so I am going to ask that we hear as the first witness one who has put a lot of effort and a lot of study into this legislation.

He has been very active in behalf of his bill, and also other bills in the last Congress dealing with this subject matter, Congressman William Miller, who has filed H. R. 3340.

Mr. FORRESTER. Mr. Chairman, could I intervene just one second?

Mr. LANE. Yes.

Mr. FORRESTER. Did I understand the chairman to say that the bill as reported out and passed by the Senate last year is identical with the legislation that is before us now, or is it different?

Mr. LANE. It is different. The bill that passed the Senate last year was objected to by at least some of the general contractors, as I remember.

Mr. FORRESTER. In other words, this is a bill of first impression here in the House and in the Senate; is that correct?

Mr. LANE. That is right.

Mr. FORRESTER. I would also like to ask this question: Was the chairman simply stating what his hopes and aspirations were that these hearings be restricted to 2 days, or is the chairman laying down the rule that these hearings shall only be for 2 days?

Mr. LANE. No. Of course, we will give everyone and everybody an ample opportunity, as we always have done.

Mr. FORRESTER. I simply wanted to inquire into that and I want to know because, of course, the Chair realizes that we have at least two new members on this subcommittee who did not have the benefit of hearing the testimony last year.

Is this the list of all of the witnesses who, up to this time, have requested the right to testify?

Mr. LANE. Those are the witnesses who have requested to testify here, and we may call on somebody from some of the Government agencies following this list.

Mr. FORRESTER. I particularly wanted to inquire into that because the Government agencies appeared and testified last year, and I, for one, would certainly think that we should hear from the persons who are actually going to be the ones who are going to make these contracts.

Mr. LANE. I want to say at this point in the record, for the benefit of Congressman Forrester and the rest of the members of the subcommittee, that a statement was sent here by the Department of Defense only yesterday in reference to this bill, and as a result of that statement, I think it is advisable, as you have intimated here, that we have somebody come over from those agencies that are affected and testify here to help the committee get all the evidence in one way or the other.

Mr. FORRESTER. Would the chairman permit me to express my pleasure in having the gentleman from New York visit us today and testify? He made a wonderful contribution to the activities of this subcommittee and has in the entire Congress.

I do not know of any man, Mr. Chairman, that I hold in higher regard for his legal ability and his Americanism, and I am sure that every member of this subcommittee is glad to have the opportunity of hearing the gentleman from New York testify.

Mr. LANE. I think every one of us on the committee joins with you in that.

Mr. MILLER. Thank you.

Mr. BOYLE. Will the chairman yield?

Mr. LANE. Yes.

Mr. BOYLE. Mr. Madden from Indiana has a Rules Committee meeting and he thought if you brought that to the attention of Congressman Miller, Congressman Miller might let him just deposit his statement that he has for the record.

Mr. MILLER. Certainly.

Mr. LANE. We will be glad to have it. We are always glad to have the gentleman from Indiana.

TESTIMONY OF HON. RAY J. MADDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. MADDEN. I want to commend the committee for calling this bill up. If you remember, I appeared before your committee last year on this same bill, although this bill has been changed considerably, and I know it will be explained during your hearings here.

Mr. LANE. Congressman Madden is the author of H. R. 3241, which is a companion bill.

Mr. MADDEN. I think that this legislation, Mr. Chairman, and members of the committee, will fulfill a long-desired need in order to

eliminate a lot of unfair bidding and sharp-shooting going on in the contracting business, and I forget what the vote was 2 years ago on the floor of the House, but it was very close, anyhow, and there have been several improvements on the bill.

Unfortunately, I have this Rules Committee meeting at 10:30, but I want to thank you for giving me permission to submit this statement, and hope that the committee will act favorably.

Mr. LANE. We welcome the gentleman from Indiana. I am glad he has come here, and we know that he is always of help and assistance to this subcommittee. I know he has something constructive here to offer.

Mr. MADDEN. Thank you.

Mr. LANE. Thank you, Congressman Madden.

(Mr. Madden's statement follows:)

STATEMENT OF REPRESENTATIVE RAY J. MADDEN

Mr. Chairman, and members of the committee, I am glad to have this opportunity to appear before you in support of the Federal Construction Contract Procedures Act, since I am the sponsor of H. R. 3241, 1 of 5 bills pending before you, as I was of similar legislation in other Congresses.

In revising the bill every effort was made to the extent feasible and still retain the basic benefits for the Federal Government and the construction industry, to meet all meritorious objections made against previous bills.

I believe that the new bill meets these objections fairly and squarely and that hence there are no reasonable grounds for anyone to object to passage.

And I am convinced that benefits will flow from enactment of this legislation to the Government and to the construction industry alike. The unfair trade practices of bid shopping and bid peddling on Federal construction will be effectively curbed. As a result, active competition among mechanical specialty subcontractors, and I believe also among general contractors, will increase materially because a climate will have been created where ethical and aboveboard dealings will again prosper. No longer will the ethical general and subcontractor be at a competitive disadvantage with the unethical mechanical specialty contractor and unethical general contractor who engage in the unfair trade practices of bid shopping or bid peddling after the award of the prime contract.

The Government likewise will benefit because by eliminating the unfair trade practices of bid shopping and bid peddling there no longer will be an opportunity for the unethical to gain unjust enrichment by resort to these unfair practices. The result most certainly will be better construction and better workmanship for fewer construction dollars.

TESTIMONY OF HON. WILLIAM E. MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. MILLER. Mr. Chairman, I will not take more than 2 or 3 minutes' time of the committee. I am certainly one who knows and should know the time that this committee has spent on this particular legislation and how very well oriented and indoctrinated you are into the various phases and aspects and ramifications of this legislation.

Most of you will recall that when hearings were conducted on similar legislation last year, I was a member of this same subcommittee. As such, I attended each session of the hearings and listened very attentively to all witnesses who testified, especially those witnesses who voiced opposition.

As the chairman pointed out in his opening statement, this legislation in somewhat different form has already been approved by a vast majority of the Members of the Congress of the United States. It passed the Senate unanimously and received a substantial majority

in the House of Representatives, but lacked by 15 votes the required two-thirds vote necessary under a suspension of the rules.

Nevertheless, after the adjournment of Congress I continued to give thought to this problem. It was evident to me that subcontractor listing legislation on Federal construction is needed, is in the public interest, and is in the interest of the entire construction industry, meaning both contractors and subcontractors.

With these three conclusions in mind, I gave consideration to the specific objections of opponents, as I know you did, Mr. Chairman, and others interested in this particular legislation, and it became clear to me, as I know it did to you also, Mr. Chairman, that the bill could be amended to eliminate major objections which were registered against it and yet achieve its primary purposes, namely, properly to protect both the Federal Government and the construction industry itself from the effective abuses which have crept into Federal construction contracting, which is a very great percentage of contracting and construction business in the country today.

It is my opinion that the revised bill fairly meets the objections registered against previous bills. At the same time, I believe it should effectively curb the unfair trade practice of bid shopping on Federal construction. Whether the uneconomical and unfair trade practice of bid shopping is eliminated will depend largely upon the bona fide use of the 5-day clause in this new bill.

Under this new operative feature a general contractor is at liberty during a period not to exceed 5 working days after the opening of a bid to change a listed mechanical specialty contractor merely by notifying the Government of the change in writing. Its purpose, of course, is to give the general contractor a brief period after he submits his prime bid to evaluate the mechanical specialty subbids and to make whatever reasonable investigations are needed with respect to the mechanical specialty subcontractors.

Legitimately used, this flexible provision should better effect the purposes of the legislation. Abused, the provision might prevent the realization of the purposes of the act.

I suggest, Mr. Chairman, that after the bill has been in operation for a reasonable period of time the professional staff of the committee might very well be directed to confer with the contracting agencies of the Government to obtain factual information as to how the law is working, particularly whether there is abuse of this 5-day period.

Without wishing further to encumber the record, Mr. Chairman, I express the hope that your committee will act favorably on the legislation at an early time.

It is my understanding that because of the changes made, this legislation is now approved by the General Contractors Association. It is my understanding, therefore, that since it is now approved by all of the contractors and all of the subcontractors, the only opposition, if any, which may be registered against this bill before the committee would come from the Government contracting agencies, and that might be explained in any 1 of 2 ways.

Maybe they went out on such a limb last year in opposition to the bill that they do not know how to crawl back, or maybe they simply are following the general pattern of the Government agencies in being reluctant to change established procedures even though perhaps they

might in practice work for the best interests of the Government, our economy, the contractors, and the subcontractors.

I thank you very much, Mr. Chairman, and I have to get to my subcommittee.

Mr. LANE. I might say to the Congressman that I think that is a good suggestion, to have the staff look into the working out of that 5-day provision to see whether or not it is abused.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. LANE. Because it could very well be.

Mr. BOYLE. I want to publicly say we all miss Mr. Miller on our subcommittee and particularly we are appreciative of the way he grabbed that laboring oar and worked on this bill in the last session. I am glad to see him swinging so freely here this morning.

Mr. MILLER. Thank you. With you and the other members here present, I have no worries concerning the successful passage of this legislation.

Mr. LANE. Congressman Poff has a question.

Mr. POFF. Congressman Miller, in connection with the 5-day rule, let me direct your attention to line 20 on page 4. Would the terminology not be improved by substituting for the word "of" on that line the word "after."

Mr. MILLER (reading):

> A general contractor who submits a bid with respect to a lump-sum contract to be awarded on a competitive-bid basis may, at any time within 5 days * * * of the date of the opening of the bids therefor * * *.

Yes, I think that would be better language. I would think that would improve it. Once again, Mr. Chairman and members of the committee, I thank you very much.

Mr. LANE. Thank you, Congressman Miller.

Mr. LANE. As the next witness, we are pleased to have Congressman William G. Bray, of Indiana, who also is one of the Members of Congress who has been very much interested in this subject matter and has worked on it both in the last session and at this session, and has been active to have early hearings on this bill.

His bill is H. R. 3810 and we are more than happy and pleased to have Congressman Bray come here before the committee. We know you have another committee to attend, too, and we will make way for you so you will have an opportunity to be heard.

TESTIMONY OF HON. WILLIAM G. BRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA

Mr. BRAY. Thank you, sir.

Mr. Chairman and members of the committee, I am happy to appear before you in behalf of the Federal Construction Contract Procedures Act.

As you know, I am the author of H. R. 3810, one of the five identical House bills which are pending before your committee and I sponsored similar legislation in the last Congress.

H. R. 3810 and companion House bills, although somewhat revised and expanded over earlier versions, basically and simply are subcontractor listing measures, requiring general contractors on Federal

construction projects in the United States in excess of $100,000 to list in their prime bids the names of the mechanical specialty subcontractors they will engage to perform each major category of mechanical specialty work. Such work includes plumbing, heating, piping, air conditioning, refrigerating, ventilating, electrical, and the like.

The fair bidding procedures established by this bill will enable the independent small-business man, of which there are many thousands in the mechanical specialty trades, to have a fair opportunity to share in Federal construction on an open, competitive basis.

This will be accomplished by the elimination of the unfair trade practices of bid shopping and bid peddling on Federal construction work. The result will be that not only will the construction industry itself benefit, but the Federal Government also will receive significant benefits in the form of substantial savings on Federal construction.

Under the legislation the independent small-business men in the mechanical specialty fields, the trade unions which they employ and, in fact, the entire construction industry, one of the largest and most important in the whole economy, will continue to prosper in a competitive and free economy.

Thank you, gentlemen. I did want to make a very brief statement on the subject. I have been interested in this matter even before I came to Congress, due to what I thought were grave injustices being done in this field.

Mr. LANE. Thank you, Congressman Bray. You are very considerate of our subcommittee, knowing that we have a number of witnesses to be heard. I wonder if there are any questions from the members of the committee?

If there isn't, Congressman Bray, again I thank you for your appearance here this morning.

Mr. BRAY. Thank you.

Mr. LANE. Our next witness is Mr. N. O. Wood, Director of the Division of Property Management, Department of the Interior. Mr. Wood? Mr. Wood is not here.

Then we will go to our next witness, Mr. Paul M. Geary. We will allow Mr. Wood to testify a little later. Mr. Paul M. Geary is executive vice president of the National Electrical Contractors Association.

TESTIMONY OF HENRY H. GLASSIE, COUNSEL, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

Mr. GLASSIE. Mr. Chairman, Mr. Geary had a very serious operation last Thursday and he had hoped to be well enough to be here this morning, but is still too sick and asked me to present his statement for him, if I may.

Mr. LANE. All right; just so we will have in the record your name.

Mr. GLASSIE. I am Henry H. Glassie. I am general counsel to the National Electrical Contractors Association and I am myself a member of the board of trustees of the Council of Mechanical Specialty Contracting Industries. With your permission I will read Mr. Geary's prepared statement.

Mr. LANE. All right.

Mr. GLASSIE. Mr. Geary's statement is as follows:

PREPARED STATEMENT OF PAUL M. GEARY, EXECUTIVE VICE PRESIDENT, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

My name is Paul M. Geary. I am executive vice president of the National Electrical Contractors Association.

Our association was founded in 1901. It now has a membership of over 3,700 companies engaged in electrical contracting. Our membership is organized in some 110 chapters throughout the United States and for many years now we have been the recognized spokesman for more than 15,000 concerns in the industry.

Most of our members do a gross business of less than $250,000 a year. Thus we are small-business men. Of course many of our members do a gross of several million a year. However, even the largest fall within the usual definition of small business.

Despite this, our industry is a major industry with the annual volume of electrical contracting now exceeding $4 billion a year. When this amount is added to the annual volume of the other mechanical specialty contractors, that is, plumbing, heating, piping, air conditioning and the like, it is a $20-billion-a-year industry. Thus the mechanical specialty contracting industry is one of the last major segments of our economy which is entirely in the hands of independent small-business men.

I am also a member of the board of trustees of the Council of Mechanical Specialty Contracting Industries, Inc., a nonprofit membership corporation composed of companies in all branches of the mechanical specialty contracting industry, including those who are members of the national trade associations in their respective fields—

such as the National Electrical Contractors Association—

and those who are not. Its purpose is to represent the joint and common interests of all mechanical specialty contractors.

In order that the record be complete but not unduly extended and the time of your busy committee unnecessarily consumed, I will present a single integrated picture for all interested groups.

Perhaps "integrated" is not a good word to use these days, but I hope it is understood here.

I will attempt first to give the substance of the bill and the industry background indicating the necessity for this legislation. This will be done briefly since I know most of you are familiar with it. My testimony then will be devoted primarily to describing the new features of the revised bill, that is, the significant changes which have been made from S. 1644 which was pending in the last Congress.

At the conclusion of my statement, with the permission of the committee, a representative from each of a number of other interested groups would like to identify themselves and submit for the record additional statements in support of the legislation. They will not ask to present their testimony orally.

The revised bill in form, substance and purpose is generally similar to the Federal Construction Contract Act, S. 1644, which you gentlemen will recall passed the Senate in the 84th Congress and received a majority of 100 votes in the House but failed of the two-thirds necessary for passage under suspension of rules by a scant margin.

I believe the vote was 245 to 145. Counting pairs it would have been 255 to 150.

Although certain provisions have been expanded, the bill still remains a simple subcontractor listing measure. It requires, with respect to Federal construction projects, that the general contractor on submitting a bid to the Government shall list the names of the subcontractors he intends to engage to perform the major categories of mechanical specialty work.

The reason for such listing is found in the unique economic background of the construction industry.

When I commenced my association with the contracting industry many years ago, the mechanical and electrical part of contracting was a minor, inexpensive and frequently unplanned part of the job. Today it is highly complex and

technical. It accounts for approximately 40 percent of the total cost of Federal construction. On many jobs it is over 50 percent of the total cost. On some it may run much more than 50 percent. It is in this complex part of construction that most of the variation in cost occurs. The mechanical part of construction, moreover, is rapidly increasing in cost in relation to the whole cost. As short a time ago as the end of World War II, just 11 years ago—

I refer to 1946—

electrical work, for example, was about 3½ percent of the total cost of new construction. Today it is over 10 percent of the cost.

Mechanical contracting requires an organization of highly trained engineers and technical personnel. The cost of this mechanical work cannot be estimated by simple rule of thumb or calculation methods used for such items as brickwork, painting, and earth moving. Mechanical work is custom made. Estimating it is very tedious and very costly. The direct out-of-pocket expense of preparing a mechanical bid on a major Federal project frequently runs into several thousand dollars. Indeed, the cost of estimating the mechanical work on a large project may exceed the total cost of estimating or preparing the general or overall bid of the prime contractor.

Only a handful of the general contractors are prepared to perform mechanical work—about 20 in the entire country. Likewise, general contractors are not set up to estimate the mechanical work on the more complex projects. They know what the carpentry and excavating will cost. But, in order to prepare a general bid, they must first secure subbids for the mechanical work.

For the benefit of everyone concerned, particularly the owners, general contractors should secure subbids from a number of responsible mechanical subcontractors and use the low, competitive, subcontract price thus secured in preparing their bid to the Government. Of course, they should enter into a contract with the responsible subcontractor who in good faith submitted to them the bid which they used in preparing the general bid. Unfortunately, however, there has grown up in the construction industry, and particularly on Federal projects where the procedures have not heretofore been established to prevent it, the practice known as bid shopping or bid peddling. This practice was described by the United States Tax Court, in a renegotiation case entitled "*Ring Construction Corporation*" (8 T. C. 1070), as follows:

"There is a practice among some contractors of shopping among subcontractors after successfully bidding for a construction job in order to obtain lower subcontract prices than those previously submitted and used in making up the successful bid. Such a contractor is known as a 'bid jobber' or 'bid shopper' and there is a policy among subcontractors either not to bid with a contractor known to be such a 'bid jobber' or to bid so high that he, the subcontractor, can still come down on his price and get the job."

I might interpose there that in that case, which was a renegotiation case, they found the saving by bid shopping to the general contractor was some $600,000 on 1 project, which under the then regulations had to be refunded to the Government, but we have no such applicable renegotiation statute at this time.

This quotation adequately describes the practice known as "bid shopping." It is not necessarily initiated by general contractors. Just as often the initiation comes from a subcontractor who after the bid opening solicits disclosure of the low subbid (known in the trade as the "last look") and couples the solicitation with an offer to go a few dollars under the low price.

We are not concerned with the ethics of these practices as such, but in their economic result. The situation has reached the point of Federal construction where it seriously affects the cost of Federal construction and the stability of the contracting industry.

The Tax Court in the above-quoted opinion stated the practice leads some subcontractors to refrain from bidding. In previous hearings there have been submitted statements of dozens of the best known mechanical contractors from all sections of the country that because of this practice they customarily refuse to bid on Government construction as subcontractors. In order to have a statistical analysis of this problem in 1955, I had a questionnaire sent out to all large electrical contractors in the United States, those who under normal conditions would customarily bid on the large Federal jobs in their area of operations. It appears that fewer than 25 percent of these companies customarily submit subbids

on Federal construction jobs. Of those who customarily refrain from submitting subbids on Federal construction jobs, more than 93 percent gave the prevalence of bid shopping as their reason for refusing to submit subbids.

Now, gentlemen, you can well imagine the economic result of this refusal of the great majority of the best qualified mechanical specialty contractors to bid under normal conditions on Government jobs. The field of competition is seriously restricted. There is not enough healthy competition to give the Government the low competitive price.

You will recall the Tax Court of the United States in the previously quoted opinion said the practice also caused those who did put in subbids to use an artificially high price—"to bid so high that he, the subcontractor, can still come down on his price and get the job."

In short, under the present situation, the mechanical subcontract prices, averaging upward of 40 percent of the total cost, are not finally negotiated until after the award of the prime contract. When the prime bids go in to the Government, the prime contractor does not know what the mechanical work will cost him. True, he has some preliminary figures. True, also, he may shave these in his estimates in anticipation of being able to effect savings by bid shopping. But the price is not final and not definite. A general contractor who has an electrical bid at $100,000, who hopes to cut this by shopping to $90,000, can't afford to base his own bid on as low a figure as if he had already negotiated the final low price of $90,000—and he knew he would have it.

Thus, at present, the price the Government gets is not only too high because of the thinness of competition, but too high because it does not reflect the final price for the mechanical work. A prudent owner who wishes to secure the best price for construction should adopt a system whereby the price for the mechanical work is final before his own price is final.

From the standpoint of the public, then, the prevalence of bid shopping raises the cost of public works. From the standpoint of the industry I represent, it keeps the most ethical, the best qualified, and the most efficient contractors out of Government work. It deprives them of an opportunity to share in this work. Federal construction totals more than $3 billion each year, approximately 10 percent of all construction. Naturally we want a chance to get our fair share of this on an open, competitive basis. We don't want special favors, only the open competitive bidding which the Federal Government work has traditionally afforded in other fields.

I referred above to the fact that a prudent private owner-purchaser of construction should take steps to see that the price of the mechanical work was finalized prior to the time his own price was fixed. And I should like to discuss what other large purchasers of construction, major industrial enterprises, and large public bodies such as States and municipalities are doing to protect themselves.

Most of big industry, and more of it every day, is adopting 1 of 3 basic plans to assure themselves of the right price when they construct major facilities:

(*a*) They make direct, separate contracts with mechanical specialty contractors;

(*b*) They take separate bids for the mechanical specialty work, assigning the low mechanical bidders in each category to the general contractor as subcontractors; or

(*c*) They require the general or prime contractor to specify in his bid the names of the mechanical specialty contractors he intends to use, thus compelling the prime contractor to finalize his arrangements before submitting his bid.

The first plan of direct, separate contracts is economical and satisfactory where the owner has a sufficient staff to coordinate the work. It is used by such organizations as Chrysler Corp., International Harvester, Montgomery Ward, the States of New York, Ohio, North Carolina, Kansas and Arkansas—

I believe Arkansas has changed that in the last month—

the cities of Kansas City, Moline, Gary, Rock Island, and others. This is a plan, however, which admittedly would present administrative difficulties on Federal contracts. We do not advocate it for the Federal Government.

The second plan, the so-called Massachusetts plan, has been used successfully by the States of Massachusetts and Illinois for several years and by such companies as Minnesota Mining & Manufacturing Co., Westinghouse, and Pittsburgh Plate Glass Co. It avoids the necessity for the owner to coordinate the progress of the work, but does leave the owner with the necessity of evaluating the me-

chaalcal bids and selecting the mechanical subcontractors. Here again there might be administrative difficulties in applying this system to public works.

And we do not advocate it for the Federal Government.

The third plan—the one recommended by the American Institute of Architects' official Handbook of Architectural Practices—is that prescribed by the bills you are considering, simply a requirement that the prime contractor list in his prime bid the subcontractors he intends to use. This is the plan used by the States of Califorala, Idaho, and South Carolina, and such companies as General Electric, Dow Chemical, Dupont, Ford Motors, Republic Aviation, Sunshine Biscuit, and Colgate-Palmolive Co.

Mr. CRAMER. Is it the intention of the Chair that the entire statement should be read before any questions are interjected?

Mr. LANE. He is only reading the statement of the gentleman who is unable to be here this morning.

Mr. GLASSIE. I would be glad to answer any questions, Mr. Chairman.

Mr. LANE. Do you desire to testify yourself when you have finished this statement?

Mr. GLASSIE. I think possibly to make it clearer that I am reading Mr. Geary's statement now, I would be glad to answer any questions later if that is satisfactory to Mr. Cramer, so it would not confuse my testimony with his.

Mr. CRAMER. It is just a technical question. I just wondered whether those States using any of those plans are using them by statute or by practice?

Mr. GLASSIE. The States of California and Idaho have statutes. The State of South Carolina uses its plan by practice.

Mr. CRAMER. That is all.

Mr. GLASSIE. By an administrative ruling of some sort.

Mr. LANE. When you have finished reading your statement maybe the members of the committee would like to ask you yourself some questions on your own testimony.

Mr. GLASSIE. I shall be very glad to answer any questions I can, Mr. Chairman, and I have people with me who can supply the answers that I would not know.

Mr. LANE. All right. You may continue with your statement.

Mr. GLASSIE (reading):

FURTHER STATEMENT OF PAUL M. GEARY

It is our belief that the simple listing requirement of these bills is the most suitable and flexible for the Federal Government.

This plan involves no additinoal administration on the part of the owner. It leaves all responsibility for performance and management in the hands of the prime contractor. The Government as owner has only one person to deal with aad one person to whom the owner may look for fulfillment of the coatract. At the same time, the Government gets the benefit of active open competition for the mechanical subcontracts and the low competitive price for the mechanical work is reflected in the Government's own price.

Under the system prescribed by these hiils the general contractor would be careful to secure a large number of subbids from mechanical specialty contractors prior to submitting his own bid so that he could bid competitively. We would have no incentive to shop after the award. By the same token, the subcontractors, realizing that their hids would not be shopped, would be not only willing to hid, but willing to submit their lowest possible figure in advance of the award.

This, gentlemen, is the reason we advocate the passage of the Federal Construction Contract Procedures Act.

I would like now to describe the differences between the bills under consideration and S. 1644 which you had under consideratioa last year.

I have mentioned above that we do not advocate separate direct contracts on Federal projects. It appears, however, that many general contractors nevertheless entertained the fear that this was our ultimate goal. Moreover, the Federal agencies feel very strongly that the single contract system is highly preferable for most types of Federal projects. For this reason the current bill contains in section 1 (b) a statement in the nature of a preamble that it is desirable and in the best interest of the Federal Government for it to use the single contract system in procuring building construction, provided such system includes procedures under which the subcontracts for the mechanical specialty work are finalized as far as practical prior to the submission of the prime bid. General contractors feel that this statement is a highly desirable clarification of the intent of the legislation and we are in entire accord with them.

The next change results from an objection made by the Associated General Contractors to S. 1644 that on some occasions they might be forced to submit a bid to the Government before they had received a definite and complete subbid for some category of mechanical specialty work and, therefore, it would be impractical to require them to list a subcontractor in their bid in such instances. Frankly, this is something that would happen very rarely. On the other hand, we believe it is well that the bills now contain a provision permitting the contractor to submit, in lieu of listing the name of a subcontractor, a statement in effect that he has made a bona fide effort to secure sufficient subbids and has nevertheless obtained no definite and complete subbid for the category in question. This provision is spelled out in a proviso to section 2 (b), commencing on the last line of page 2. Of course the proviso continues that in such event the successful general contractor must nevertheless advise the Government the name of the subcontractor within 5 business days after the submission of the bid.

You will recall that S. 1644 provided that the general contractor might change a named or listed subcontractor only (*a*) in the event of failure or default of such contractor, or (*b*) if the general contractor accounted to the Government for any savings occasioned by the change. The Associated General Contractors took exception to this, contending that in some instances the general contractor did not have sufficient time before submission of the prime bid to complete all necessary checking of the subcontractor's credit, responsibility, technical qualification and workload, and to check the completeness and accuracy of the subbid. Accordingly, the bill now before you provides that in addition to the other two instances where a general contractor may change a listed subcontractor, he may do so without any permission or assigning any reason within a period of 5 business days after the submission of the prime bid.

Attached as appendix A, are the detailed reasons as outlined by the Associated General Contractors of America for needing the 5-day period.

Ten specific reasons they assign.

(Appendix A is as follows:)

APPENDIX A

REASONS AS OUTLINED BY THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA FOR NEEDING THE 5-DAY PERIOD

1. To check the financial ability of the subcontractor, and if a bond is required under the terms of the subcontract, his ability to furnish bond.
2. To check the reputation of the subcontractor for completing work on schedule.
3. To check the experience of the subcontractor on the particular type of construction which is the subject of the contract.
4. To check the present volume of work under construction, as compared to the normal capacity of the subcontractor.
5. To check the handling of labor by the subcontractor to avoid conflict with the labor policy of the general contractor and other subcontractors.
6. To examine the bid of each subcontractor for qualifications or exceptions and to compare these with the requirements of the specifications.
7. To check the bid of the subcontractor as to any substitutions to determine whether such are permitted and, if so, whether they will meet the specifications.
8. To examine the bid of each subcontractor for completeness of coverage, including items of work that should be in the specifications but which might possibly be elsewhere.

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9. To check the equipment of the subcontractor to determine whether he has the general or special type of equipment which may be needed.

10. To make similar evaluations of the other bids which may not be low on their faces but which are close and to reconcile any difference in coverage in order that the actual price of the bids may be compared accurately.

Mr. GLASSIE (reading):

Mr. Chairman, we feel that the contentions of the general contractors in this regard have some merit and accordingly we feel this provision contained in section 2 (f) is acceptable to the mechanical specialty contracting industry.

I should like to state, however, that the success of the legislation in accomplishing its primary objectives will depend to a large degree upon the bona fide use of this provision. If it is misused or abused the full benefits of the bill will not flow either to the Government or to the construction industry. We feel they are inherent deterrents to the misuse or abuse of this provision in that a general contractor who habitually switches subcontractors during the 5-day period or a subcontractor to whom subcontracts are continually and habitually switched during such 5-day period would stand out to the industry and to the awarding authorities as one engaging in an unfair trade practice which subverts the purpose and intent of the legislation and the price benefit to accrue therefrom to the Government. Moreover, your committee and other Members of Congress would have access to this factual data which would establish whether the legislation was working effectively or whether the intent of Congress was being circumvented. Accordingly, I hope that the committee report will spell out the intent of Congress in providing this 5-day period which is to permit the legitimate and necessary checking of the 10 particulars above referred to—

as furnished by the Associated General Contractors of America.

There are a number of other relatively minor differences between the bills before you and S. 1644. I am appending—

and, Mr. Chairman and gentlemen, that is appendix B—

to my statement a precise list of all these differences and will be glad to discuss them if you would like me to do so. I think it is only necessary to mention a few.

(Appendix B is as follows:)

APPENDIX B

LIST OF DIFFERENCES BETWEEN S. 1644, 84TH CONGRESS, AND H. R. 3339, 85TH CONGRESS

1. The word "procedure" has been added to the name of the bill (sec. 1 (a)).

2. A preamble has been added stating that it appears desirable for the Federal Government to use the single contract system; provided such system includes procedures for finalizing mechanical specialty subcontract prices prior to the submission of the prime bid and to discourage the unfair trade practice of bid shopping (sec. 1 (b)).

3. A prime contractor, in lieu of listing a subcontractor for a category of mechanical specialty work, may submit a statement in writing that he has made an effort to secure subbids, stating that he has requested subcontract bids from not less than three responsible subcontractors, listing the names of subcontractors from whom he has requested or received subbids, and stating that he has received no definite and complete bid for such category. In such an event he must list the subcontractor within 5 business days after the bid opening (sec. 2 (b)).

4. A general contractor who states he will himself perform a category of mechanical specialty work must include a statement that he is able and intends to perform such work (sec. 2 (c)).

5. The right of executive agencies to award separate, direct contracts is limited to cases where in their judgment this would be advisable because of special circumstances or the nature of the project (sec. 2 (d)).

6. A general contractor may at any time within 5 business days after the opening of the bids engage a different mechanical specialty contractor from the one named in his bid simply by notifying the executive agency of the name of the substitute (sec. 2 (f)).

7. The general contractor's right to change a listed subcontractor in the event of default now specifically includes the right in the event the named subcontractor is disqualified or determined to be unqualified by virtue of any Federal ruling or determination (sec. 2 (g)).

8. In the event of a change in subcontractors more than 5 business days after the bid opening and without default or disqualification, the general contractor must account to the Government for any savings by deduction from his contract price but need not secure permission to make such change (sec. 2 (h)).

9. Under S. 1644 the provisions of the act could be waived by the head of an executive agency. They now may be waived by a chief officer responsible for procurement upon his determination that public exigency or military necessity requires waiver (sec. 2 (i) (3)).

10. Highways are now excluded rather than included in the definition of construction contract (sec. 3 (3)).

11. A definition of a "major category of mechanical specialty work" has been added, being the same as that set forth in the Senate Judiciary Report on S. 1644 (sec. 3 (4)).

12. Throughout the bill the term "general contractor" is used in lieu of "prime contractor." (See particularly sec. 3 (5).)

13. A section has been added providing that nothing therein limits the rights of the Government against the general contractor or relieves him from responsibility. This is similar to the amendment made by the House Judiciary Committee to S. 1644 (sec. 4 (b)).

14. Executive agencies expressly are not prevented from making additional requirements with respect to subcontractors and it is expressly provided that such additional requirements will give no right of action against the Government (sec. 4 (c)).

15. The act expressly provides that it creates no contract right or property right in any person (sec. 4 (d)).

Mr. GLASSIE (reading):

For example, S. 1644 contained a provision permitting the head of an executive agency to waive its provisions in the event of public exigency. In the hearings last year the Department of Defense suggested that the provision for waiver by the agency head was too cumbersome and stated that the appropriate person to exercise this discretion was a "chief officer responsible for procurement" and, moreover, that the waiver provision should expressly mention "military necessity" as well as "public exigency." The revised bill adopts these views of the Department of Defense.

This bill spells out with more particularity that it creates no cause of action in favor of the mechanical specialty contractors against the Government and creates no privity of contract, and moreover that the Government shall look solely to the general contractor for the performance of the contract and that the act shall in no way relieve the general contractor of his traditional responsibility in this respect. Further, the bill now provides that it shall in itself create no contract right and no property right in any person. I do not believe these provisions now contained in section 4, commencing at the bottom of page 8, in any respect change the legal effect of the bill. I am advised that they do not. But with the Department of Defense and other interested agencies we believe that it is desirable to have these matters clearly determined by the language of the bill itself.

Of course in an industry which contains as many as a hundred thousand separate companies there could be no such thing as complete unanimity of opinion. Nevertheless, I believe it is a fair statement that the entire construction industry now appears to be united in the belief that the proposed form of legislation would establish a reasonable, practical, and beneficial system insofar as the industry and the Federal Government are concerned. A number of the interested construction trade unions also have studied the legislation and indicated their approval.

I hope the legislation will have the early and favorable action of the subcommittee.

As I mentioned, there are several gentlemen here who wish to identify themselves and the organizations for whom they speak and submit statements in support of this bill.

I appreciate very much this opportunity to be heard.

Mr. Chairman, with your permission I should also like to submit two statements I have here in support of the bill, the first one being

a statement of James S. Binder on behalf of the Council of Mechanical Specialty Contracting Industries, Inc.

Mr. LANE. Without objection it will become part of the record.

(The statement is as follows:)

STATEMENT OF JAMES S. BINDER ON BEHALF OF THE COUNCIL OF MECHANICAL SPECIALTY CONTRACTING INDUSTRIES, INC.

Mr. Chairman, and members of the committee, my name is James S. Binder. My home is in Little Rock, Ark. I am president of Pfeifer Plumbing & Heating Co., Inc., which operates in the Southwest with offices in Little Rock. But I appear here today as president of the Council of Mechanical Specialty Contracting Industries, Inc.

The council, a nonprofit membership corporation, composed of companies in all branches of the mechanical specialty contracting industry, represents the joint and common interests of all of these contractors.

Following the adjournment of the 84th Congress, the council undertook an extensive and comprehensive study of previous congressional hearings on various subcontractor listing bills. Particular attention was directed toward the testimony of those who had opposed this legislation, especially S. 1644, and to the comments of those who had submitted suggestions as to ways in which the form and substance of the bill might be improved.

At the conclusion of these exhaustive studies we instructed our counsel to prepare a number of amendments to S. 1644, some of which may be classed as significant and others of a minor and clarifying nature. Each had as its purpose to improve the bill by eliminating the grounds for the reasonable objections voiced by opponents, while at the same time retaining the basic objectives.

After the bill had been revised and refined it was submitted to each trade association in the mechanical specialty contracting fields and to the trade unions which they employ and to the trade association of the general contractors for study and comment. Additional quite constructive suggestions were submitted.

The sponsors of the bill in the last session of Congress were advised of our suggested revisions and these are incorporated in the new bill.

As a consequence of the thorough and intelligent study given this legislation by the very best brains in the entire construction industry, we believe that the new bill represents a composite of the best thinking in the industry and also in the Government because it includes the suggestions of record made by representatives of interested Government agencies who testified with respect to S. 1644 during the 84th Congress.

We hope that your committee will be able to act expeditiously in favorably reporting this legislation to the full committee.

Mr. GLASSIE. And a statement of Walter F. Limbach on behalf of the Sheet Metal & Air Conditioning Contractors National Association.

Mr. LANE. Without objection that also will become part of the record at this point.

(The statement is as follows:)

STATEMENT OF WALTER F. LIMBACH ON BEHALF OF THE SHEET METAL & AIR CONDITIONING CONTRACTORS NATIONAL ASSOCIATION

Mr. Chairman, and members of the committee, this statement is submitted as reflecting my own personal views as vice president of Limbach Co., Pittsburgh, Pa., and, in addition, as representing the views of the Sheet Metal & Air Conditioning Contractors National Association, of which I am a member of the board of directors.

My company was founded in 1901. It operates in both the Pittsburgh and Columbus, Ohio, areas. We do heating, plumbing, piping, air-conditioning, and sheet-metal work. In our operations we employ approximately 500 skilled mechanics. Of this number about 250 are sheet-metal workers, all of whom are members of the Sheet Metal Workers International Association. The remaining 250 are steamfitters and plumbers who are members of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry.

The Sheet Metal & Air Conditioning Contractors National Association is a business league with some 1,200 member companies and over 40 local chapters throughout the United States. Sheet-metal contractors do a variety of work, including ventilating, air conditioning, industrial waste and fume removal, sheet metal fabrication, and warm-air heating. All of us may properly be classed as independent small-business men, as my own company, employing about 500 skilled mechanics, is among the largest.

Our company is well qualified to handle heating, plumbing, piping, and sheet-metal work of almost every description on Federal construction. And in the past we did bid as subcontractors on a number of the large Federal projects. However, because of the unfair trade practice of bid shopping we found it uneconomical to spend the large sums of money necessary to estimate complex mechanical work and then have no assurance of being engaged to perform the work if our bid was the lowest bid submitted. Now, as a practical matter, we only bid on Federal construction when there is no other work available.

Sheet-metal contractors work as subcontractors to the general contractor and in many instances as sub-subcontractors to the heating and piping subcontractors. When we work as sub-subcontractors the provisions of the Federal Construction Contract Procedures Act would not apply directly to us but they, nevertheless, would have a most important indirect effect.

Let me describe what happens under present bidding procedures on a Federal project. A heating and piping contractor customarily delays submitting his bid to the general contractor until the very last minute before bid time. His bid, known in the industry as the first-round figure, is deliberately high or perhaps incomplete or possibly ambiguous. Thus the prime contractor's bid is based not on a businesslike and accurately calculated subbid for the heating and piping work but on a guess or a hope that he will later be able to negotiate a fair price for such work, if he receives the award.

The first act of the general contractor who receives the award is to shop the first-round bids of the heating and piping subcontractors. He does this not only among those who bid to him but also among those who did not bid in the first instance in order to come up with a low figure.

Here is how the sheet-metal sub-subcontractor becomes involved. The heating and piping subcontractor who is finally selected by the general contractor may very well attempt to shop the bid or chisel on the price of the sheet-metal sub-subcontractor. Thus we see another evil of bid shopping, so prevalent on Federal construction under present practices. For self-protection the sheet-metal contractor when bidding as a sub-subcontractor is inclined to submit artificially inflated first-round bids. Consequently the bid which the Government receives frequently is doubly inflated.

From personal experience, I know that bid shopping is a prevailing practice on Federal construction in my area of operation. My contacts with other industry members as a result of my active trade association work lead me to believe that it is the prevailing practice on Federal construction throughout the country and that it is one of the most critical problems that we sheet-metal contractors face.

While this legislation will not directly affect the sheet-metal contractors when in the capacity of sub-subcontractors, we fully favor its enactment because we believe it nevertheless will benefit us materially as well as the entire construction industry and the Federal Government itself. Under the bidding procedures of the bill we will have some reasonable assurance that if we submit the lowest responsible bid we will get the job. Heating and piping contractors, able under the bill to rely on fair treatment from the general contractor, can and will, in my opinion, extend the same fair treatment to their sub-sheet-metal contractors. Under such condition neither we nor any other qualified company in our industry would hesitate to estimate Federal projects in our areas and submit finalized subbids to all of the prime contractors who are bidding.

In fact, we would welcome the opportunity to compete openly and fairly for a share of Federal construction. The result would be that more and closer bids would be submitted with prices finalized as of the date of submission. This active competition would benefit the Government by enabling it to have bids based on finalized, low, competitive prices.

I hope that your committee will act favorably on this legislation in the near future.

Mr. GLASSIE. I expected Mr. Williams to be here. I think his plane is delayed, but I have also the statement of Mr. Fred Williams on behalf of the Mechanical Contractors Association of America.

Mr. LANE. That will be accepted. If Mr. Williams wishes to testify he may do so also.

(The statement is as follows:)

STATEMENT OF FRED WILLIAMS ON BEHALF OF THE MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA

Mr. Chairman and gentlemen of the committee, I am Fred Williams, president of Fred Williams, Inc., of Boston, Mass. I am also chairman of the legislative committee of the Mechanical Contractors Association of America, on whose behalf I submit this statement. This association is an organization of approximately 1,200 contractors throughout the country. There are 40 affiliated local associations, some of which are State associations such as the New York, North Carolina, and Wisconsin associations. Others are metropolitan associations such as the Boston, Chicago, and San Francisco associations. Our members perform heating, piping and air-conditioning work in an amount approximated over $1½ billion a year.

My own State of Massachusetts has for several years had in effect a statute applicable to State construction which provides a somewhat similar procedure to the Federal Construction Contract Procedures Act but is more complex. It accomplishes the same purposes that will be accomplished by the legislation pending before your committee; namely, to materially reduce the unfair trade practice of bid shopping, thereby providing better construction for fewer dollars.

During the hearings before your subcommittee on S. 1644 in the 84th Congress, the commissioner of labor and industry for my State, the person charged with the administration of this law, certified for the record: "* * * I can say without reservation that our Massachusetts law has worked to the advantage of the State and its political subdivisions, of contractors and subcontractors, and labor, in stabilizing costs, creating a higher quality of workmanship, and greatly improved contractual relations during the construction of the building projects. * * *" (Hearings before House Judiciary Subcommittee No. 2 on S. 1644, serial No. 18, p. 201.)

The State of Idaho also has a provision governing the award of State construction which requires a general contractor to list his principal subcontractors. Again, during the hearings before your subcommittee on S. 1644, Mr. Claude Detweiler, of Twin Falls, Idaho, a member of the National Electrical Contractors Association, the National Association of Plumbing Contractors, the Mechanical Contractors Association of America, and also of the Associated General Contractors of America, Inc., submitted a statement for the record that the State law of Idaho is operating effectively and satisfactorily. (Hearings before House Judiciary Subcommittee No. 2 on S. 1644, serial No. 18, p. 75.)

The State of Wisconsin has for several years now had a State law requiring the prime contractors on State and municipal public works to list the subcontractors which they wish to use. Mr. E. H. Herzberg, secretary-manager of the Milwaukee Electrical Contractors Association, stated to you gentlemen last year that the Wisconsin law has operated in the public interest. (Hearings before House Judiciary Subcommittee No. 2 on S. 1644, serial No. 18, p. 35.)

I am convinced, as a result of my experience under the similar Massachusetts statute, that the legislation before you is in the public interest. It should enable the Federal Government to realize substantial moneysavings yearly on its construction. It should better insure the general contractor of an adequate number of competitive subbids, submitted by the best qualified subcontractors, and received in sufficient time before closing to enable him properly to evaluate them and estimate his costs on a businesslike basis. It should insure the specialty contractor that his bid will not be misused and thus encourage a wider circle of competition among these independent small-business men with more of them having an opportunity to share in Federal construction.

A possible Achilles heel is the 5-day period during which a general contractor may change subcontractors simply by notifying the Government in writing. Hence, the committee may wish to study the factual record reflecting whether this provision has been abused after the law has been in effect for a reasonable period of time.

For myself, and on behalf of the Mechanical Contractors Association of America, your early and favorable action is urged.

Mr. GLASSIE. Mr. Chairman, I will be glad to answer any questions, and I would like to say that since I have been in the room this morning I have received a copy of a statement intended to be presented, or which will be presented, by Mr. Volpe on behalf of the Associated General Contractors. In this there are five suggested amendments. I have not had a chance to study these thoroughly. I am inclined to think we would not have any objection to them, or most of them, but we would like to present our view on these proposed amendments, even after that testimony, whenever you would consider it appropriate.

Mr. LANE. Do you want to answer questions now?

Mr. GLASSIE. Yes, sir.

Mr. LANE. I have before me a report of the Department of the Army that was received as of yesterday, and the report says here on the first page:

Present bills are a simplified version of the previous bills and remove some and lessen other objectionable features related to the administrative procedures involved, but certain objections to the proposed legislation would remain, and these may be summarized thus:

The bills are designed to protect only subcontractors engaged in mechanical specialty work, whereas bid shopping in the construction industry admittedly exists also with respect to nonmechanical specialty groups and reaches the subcontractors furnishing work and materials to subcontractors. If bid shopping is considered by the elements of the construction industry as undesirable or unethical, the matter should be one which calls for action within the industry itself rather than resort to legislative action.

Enactment of the proposed legislation would project the Government into the operations of the preferred group of private industry without affording protection to others in the same industry or other industries who are similarly affected.

What would you say as to that statement made by the Department of the Army, which is answering here as a result of our request to the Secretary of Defense?

Mr. GLASSIE. May I reply to these items individually?

Mr. LANE. Yes; I wish you would.

Mr. GLASSIE. First, they state that the bills are designed to protect only subcontractors engaged in mechanical specialty work. I believe Mr. Geary's statement explained that there is a difference between mechanical specialty work and other subcontracts in that the prime contractor or general contractor normally bases his bid on subbids with respect to mechanical work. He does not normally base his bid on subbids with respect to nonmechanical work. Of course there are exceptions to this both ways, but I would say that is the general practice. The process of preparing or estimating nonmechanical architectural work is relatively inexpensive and simple. There are not thousands of dollars involved in the estimating of it. The prime contractor knows pretty well from his own staff what these things are going to cost him.

Therefore, it simply is not the same practical problem and I should think the Department of Defense should be aware of those facts. I assume they do have some construction people that would know the difference.

Mr. FORRESTER. Is the statement of the Department of the Army correct with the exception of the explanation that you have just made?

Mr. GLASSIE. I am only referring to that point. I would like to comment on these other points if I may.

Mr. FORRESTER. He read a statement there from the Department of the Army where I believe it is said that only the specialty subcontractors were the ones who would be brought into this field.

Mr. GLASSIE. This bill only applies to the mechanical specialty subcontractors.

Mr. FORRESTER. I am not talking about this bill. His statement, as I understood it, was that the subcontractors would be the only ones who would be brought into this field. Is that statement in itself true, subject to the explanation that you gave that this is highly specialized and that the prime contractor is dependent upon the subcontractor?

Mr. GLASSIE. I am not certain I understand your question, Mr. Forrester.

Mr. FORRESTER. The Department of the Army, in other words, as I understand it, said that this is a preference that is being sought by specialty subcontractors.

Mr. GLASSIE. What they say is the bills are designed to protect only subcontractors engaged in mechanical specialty work, whereas bid shopping in the construction industry admittedly exists also with respect to nonmechanical specialty groups; and I tried to explain why the bill would cover one but would not properly cover the other.

Mr. FORRESTER. I understand that you made a distinction there, but with the exception of the distinction you made, is that statement on the part of the Department of the Army true?

Mr. GLASSIE. Oh, certainly.

Next they say that it reaches subcontractors and does not reach and affect sub-subcontractors. I think the best answer to that is that there is only one substantial group of sub-subcontractors in the construction industry, in the mechanical phase of the construction industry, and that is the sheet-metal contractors who normally don't bid to the prime contractor. They normally, or in most sections of the country, bid to the heating and plumbing contractor. I think the answer to that is they do not feel aggrieved. They have submitted a statement for the record here today, and in each previous hearing, endorsing and approving the bill and stating they think it is to their benefit, so certainly they do not feel that they are being abused in not being included, which would be a highly impractical thing.

Mr. FORRESTER. You mean the sheet-metal workers?

Mr. GLASSIE. Yes. The third point he makes there is this:

> If bid shopping is considered undesirable or unethical the matter should be one which calls for action within the industry itself.

I would like to say there that we do not consider the ethics of it the primary problem. Certainly there is no effort to suggest that contractors or subcontractors are any more or less ethical than everyone else, but it is a practice which has grown up and we feel from a lack of proper procedures in the Government which has created a bad situation for everybody, so we don't think this is designed to correct ethics. That is a very small part of it.

The second answer is that the antitrust laws prevent any concerted action between groups to blacklisting, or refuse to deal, or other frequently suggested methods of attempting to end bid shopping in the

construction industry. I think the answer is most of those that I have ever had suggested are illegal on their face.

As far as cooperating, we have the highest respect for the Associated General Contractors of America and we would be delighted and intend to cooperate with them in any lawful manner we can to do anything for the construction industry, but to brush this off with an answer that it is an ethical problem and that cooperation would end it is in my opinion highly superficial.

Mr. FORRESTER. In other words, you are operating on the idea we are all human, and we all like a little money.

Mr. GLASSIE. Yes, sir.

The next point raised by this letter is that the enactment of the legislation would project the Government into the operations of a preferred group of private industry without affording protection to others in the same industry or other industries.

I don't know of any other group that is in the same situation or that is asking any such legislation, and I do not consider this any preference. I consider this a procedure which would be highly beneficial to the Government.

Mr. FORRESTER. That was particularly the statement that I wanted you to comment on.

Mr. GLASSIE. We do not feel that there is any intent here to ask for a preference so that it would result in any preference. It is merely asking a governmental contracting procedure in the interest of the Government and in the interest of the industry in light of present economic conditions in the industry, that is, the procedures which have developed because of the changing situation in the industry.

Mr. CRAMER. Will the gentleman yield at that point?

Mr. FORRESTER. The chairman had the witness. I just asked him to comment on one particular thing.

Mr. LANE. Mr. Cramer.

Mr. CRAMER. In other words, then, the bill actually covers about 50 percent, according to your statement, page 3, of the subcontract cost involved, is that correct? Covering mechanical and electrical it is about 50 percent of the cost?

Mr. GLASSIE. We estimate it at approximately 40 percent.

Mr. BOYLE. Of the total cost.

Mr. GLASSIE. Yes. In some jobs it may run 80 percent. Take a testing laboratory or something of that sort. The mechanical part may be 80 or more percent of construction. In the average project we estimate 40 and I think that is pretty accurate.

Mr. CRAMER. Your statement is approximately 40 percent, many jobs over 50, and some may run much more over 50?

Mr. GLASSIE. Yes, sir.

Mr. CRAMER. Then in some instances 60 percent of the subcontracts would not be covered by this proposed bill, is that correct?

Mr. GLASSIE. It is correct in one sense, but not entirely so, sir, because the general contractor does a great deal of the work himself. He does not subcontract a hundred percent.

Mr. CRAMER. Therefore, he would not be covered by the provisions of the bill so far as subcontracting is concerned in protecting the subcontractor.

Mr. GLASSIE. To the extent that the prime contractor subcontracts out architectural nonmechanical work, it is not covered, and I believe

the reasons are those that I first gave, that it is a different system used in subcontracting for architectural trades.

Mr. CRAMER. Then I gather that the bill covers only those as contained in the bill, page 7, subsection (3), in the definition of the term "mechanical specialty work."

Mr. GLASSIE. Yes, sir.

Mr. CRAMER. The subcontractors included in the provisions of this act are limited to those defined in that subsection, "mechanical specialty work," is that correct?

Mr. GLASSIE. Yes, sir.

Mr. CRAMER. And that amounts, as you say, to about 40 percent, and sometimes over 50 percent?

Mr. GLASSIE. Yes, sir.

Mr. CRAMER. Is this mechanical specialty work definition one accepted in the industry?

Mr. GLASSIE. I believe it is. I qualify that by saying apparently the Associated General Contractors have a proposed amendment to it and I have not had a chance to read it, but I think it is one that has been in every bill before Congress in 5 years and I never before heard any objection to it.

I think it is generally accepted.

Mr. CRAMER. What is the reason in your previous statement as to why some should be included and some excluded? What is the reason why the mechanical specialty work should not include such people as bricklayers, and plasterers, and so forth?

Mr. GLASSIE. The reason, sir, is that the prime contractor either does that work himself or he estimates it himself and bases his price on his own estimation rather than on subbids for that work, or primarily bases his price on his own estimate. Therefore, you don't have the same practicable problem.

Mr. CRAMER. Then so far as you are concerned the mechanical specialty work as contained in subsection (3) includes all of the groups that you think should be included under the protection of this bill, is that correct?

Mr. GLASSIE. Yes, sir.

Mr. CRAMER. There are no other groups that you think should be included or have requested to be included?

Mr. GLASSIE. No other groups have ever requested to be included and I do not believe that any others should be included.

Mr. CRAMER. Thank you.

Mr. GLASSIE. I will explain that the only ones about whom there could be any conceivable question are the sheet-metal contractors, who have endorsed this bill without asking to be included.

Mr. LANE. Will you answer another question, please?

Mr. GLASSIE. Yes, sir.

Mr. LANE. The Secretary of the Army goes on to make another objection here that I would like to have you answer if you will. They say on the second page of their report here:

> In addition, it is noted the proposed legislation as written would permit bid shopping until the expiration of five days following the date of opening of bids. Moreover, the proposed legislation does not expressly provide the actions which may be taken by the Government in the event the general contractor fails to comply with the requirements imposed.

Are you familiar with that objection, Mr. Glassie?

Mr. GLASSIE. Yes, sir. It is true, it is possible for bid shopping to occur within the 5-day period now written in the bill.

On the other hand, we believe the bill as written with the 5-day period will accomplish its purpose, that is, give the general contractor an opportunity to do this checking he says is necessary, and which of course is necessary in some instances, but since the subcontractor will already be listed in public records, the possibilities of bid shopping we think are somewhat remote. At least that is our hope.

Mr. LANE. We could follow up on the suggestion of Congressman Miller that this committee take a look at it later on and see whether or not this 5-day situation is being lived up to.

Mr. GLASSIE. Yes. If it is used for the purpose for which it is intended and for which both the general contractors and the subcontractors expect it to be used, it will be beneficial. If it is abused—of course that is possible, but I don't believe it will be.

Mr. LANE. Do you know that the Department feels that in this bill we are getting away from the hard and fast rules of the Department when they carry out the provisions of their regulations by themselves?

Mr. GLASSIE. It is a departure from their present procedures to the extent of the bill certainly. We think it is a vast improvement in their present procedures.

Mr. LANE. Are you, Mr. Glassie, familiar with some of the recommendations that the Department has suggested here when they say that if the Congress should be disposed to pass a bill they have some amendments to offer to the present bills here? Especially they ask us to consider at the moment H. R. 3241 just for convenience, because some are printed a little differently from others here. The lines are a little different, so take H. R. 3241, if you will.

Mr. GLASSIE. Yes, sir. I have had very short time, but I have marked up a bill with these proposed changes and I would be glad to discuss them.

Mr. LANE. Are these proposed changes the Department recommends here agreeable with the proponents of this bill?

Mr. GLASSIE. No, sir.

Mr. LANE. They are not?

Mr. GLASSIE. I would say that one or two of them may be, but most of them are definitely not.

Mr. LANE. Why do we not take that bill, H. R. 3241? Have you their suggestions before you?

Mr. GLASSIE. Yes. I have the bill, H. R. 3241 marked with their suggestions.

Mr. LANE. They say section 1 (b), page 2, line 4——

Mr. GLASSIE. If I may say, a lot of these suggestions are really the same thing. They just a change a word or two in a number of places.

Mr. LANE. That is right. They change "proposals" and back and forth. Take section 1 (b), page 2, line 4.

Mr. GLASSIE. The first four changes are all for the same purpose. They are to eliminate negotiated contracts from the bill. I would say of the probably 15 or so changes they suggest about 6 or 7 of them have only 1 object, which is to limit the bill to contracts awarded after public advertising. We don't think it should be so limited.

A great many contracts, particularly Defense Department contracts, are not let after public advertising. They invite a selected group

of 6 or 8 prime contractors and say "give us a bid by the 12th of April at 12 noon," and when those bids are submitted we don't think there should be any difference. They should list the names of their subcontractors in the same way and for the same reasons as in a bid submitted before public advertising. We do not think there should be any difference.

Mr. LANE. Do they do that quite frequently?

Mr. GLASSIE. Yes, sir, very frequently.

Mr. DONOHUE. Mr. Chairman, why should that apply in negotiated contracts? A negotiated contract, in other words, is the cost plus.

Mr. GLASSIE. No, sir. The bill does not apply to cost plus now. It only applies to lump sum. It should not apply to cost plus. It would not suit cost-plus contracts and it does not apply to cost-plus contracts, but about 6 of these suggestions, certainly the first 4, relate to the elimination of bids submitted in any negotiation or from a selected group as distinct from bids submitted by any contractor after public advertising, and I can't see any earthly reason why it should be changed in that regard.

I can give you the exact number. That would be changes numbered 1, 2, 3, and 4. They did not number them but I will number them. Change No. 8 is for the same purpose.

Mr. CRAMER. Mr. Chairman, on that point, in section 2, subsection (f), and the subsequent sections, it describes the activity as a general contractor submits a bid with respect to lump sum to be awarded on a competitive-bid basis, may within 5 days, and so forth and so forth. The other subsections use similar terminology. Does not that terminology pretty much limit it to advertised bids, because in many instances in a negotiated contract you do not have more than one person being negotiated with. How can that comply with the "competitive bid basis?"

Mr. GLASSIE. That is the only place, 2 (f), in this bill that uses that phrase, and I am inclined to think it should not be used there. I notice one of the suggestions the Associated General Contractors make is that that should be eliminated, and we are in accord with them that that phrase should be eliminated in section 2 (f). That is the only place it is used.

Mr. CRAMER. Then it is your position that both your organization and the Associated General Contractors believe that the act should be applicable to both negotiated and advertised bidding?

Mr. GLASSIE. I cannot speak for them in that regard, but they made the suggestion that that phrase be eliminated in that section and we certainly feel that it should be, because the 5-day period would otherwise be limited to competitive bidding after advertising and we think the 5-day period should be permissible for negotiated contracts as well as competitive-bid contracts.

Mr. CRAMER. I thought one of the reasons proposed by your organization for the legislation was that it would result in getting lower bids for the Federal Government. How do you reason that as applied to negotiated contracts?

Mr. GLASSIE. The same way. I would like to explain that the usual method of negotiating contracts—it is not invariable of course—is to ask for bids at a particular time with a particular bid opening, the only difference being that the bids are requested of a selected group

rather than of the public at large, so as a practical matter the machinery is normally the same. It is not impossible that the Government under special circumstances will negotiate only with one contractor, but that is very rare. At least it has been rare in my experience.

Mr. LANE. Are you going to go on with some of these other amendments, Mr. Glassie?

Mr. GLASSIE. Yes, sir.

If you number the Army, Department of Defense amendments numerically, Nos. 1, 2, 3, 4, 8, and 19 are all the same, which is to limit the bill to competitive bids after advertising, which I discussed. They have another set of changes. I hope I have numbered these right. Its only purpose is to permit the general contractor to do any of this work himself.

The bill contains a provision now expressly permitting the general contractor to do any mechanical specialty work himself if he chooses and I do not see any point of repeating it a half dozen times. That is the purpose of about 6 or 8 of these changes.

Mr. FORRESTER. You have no objection to it other than repetition; is that right?

Mr. GLASSIE. I wouldn't see any objection to it; no, sir.

Mr. CRAMER. Mr. Chairman.

Mr. LANE. Mr. Cramer.

Mr. CRAMER. Is it your position that the bill in its present form—I presume you refer to subsection (c) of section 2—would permit the contractor to perform himself any of the specialty work which he had previously indicated in his bid was to be performed by a subcontractor?

In other words, he can do the work himself at any time he sees fit, substituting himself for the specialty?

Mr. GLASSIE. Substituting himself? Certainly he could substitute himself, outside of the provisions of the bill.

Mr. CRAMER. I am concerned about the provisions within the bill. It would seem under subsection (c) he could and it would seem under subsection (g) and subsection (h) he could not. I just wondered what was the position of your organization concerning that.

Mr. GLASSIE. Under subsection (c) if the general contractor specifies that he will do the work himself, that he intends to do it, and is able to do it, then I think he is entitled to do it whether initially or subsequently.

Mr. CRAMER. Whether he so states on the initial bid or subsequently decides even beyond the 5-day period that he should do the specialty work, he is entitled to do so?

Mr. GLASSIE. Certainly, but he would have to account for the savings in such a change, just like he would have to account in a change to some other subcontractor.

Mr. CRAMER. You have no objection then to the bill being clarified if needed to that effect?

Mr. GLASSIE. No, I would not, as long as it is clearly worded that he can't name himself as a subterfuge, and only name himself when he does in fact intend to do the work and is able to do the work and so certifies.

Mr. CRAMER. The subcontractor would be protected by subsection (h) in that he would have to make payment to the Federal Government for any difference in the cost of doing the work.

Mr. GLASSIE. Yes, sir.

Mr. CRAMER. You feel that is adequate protection?

Mr. GLASSIE. Yes, sir. I do not think there should ever be a restriction on someone doing work himself if he is able to do it and wants to do it.

Mr. CRAMER. That is the point I was wanting to make.

Mr. POFF. Will the gentleman yield?

Mr. CRAMER. Yes.

Mr. POFF. Under subsection (h) of section 2 the general contractor is empowered to engage a substitute contractor if—

the total contract price to the satisfaction of the contracting executive agency is adjusted by the net difference in cost in the event such substitution results in a lower cost to the general contractor.

Stated briefly, I understand that to mean that any monetary benefit on account of a substitution under section (h) would go to the Government.

Mr. GLASSIE. Yes, sir.

Mr. POFF. My question is, does the language of subsection (h) give the same monetary benefit to the Government on account of a substitution under subsections (h) and (g)?

Mr. GLASSIE. No, sir; I do not believe it does, because it certainly is our feeling that if a subcontractor named in good faith fails, or refuses, or otherwise is unable to comply there should not be any restrictions on the general contractor. The chances are that the prime contractor might have to pay more. If he can get it for less it seems reasonable that he ought to keep it.

Mr. POFF. That is true under the 5-day rule as well?

Mr. GLASSIE. The 5-day rule, legitimately used? Yes, sir. He might find out in this period—this is the theory of it anyway—that the subcontractor he had submited, or the name he submitted, was an irresponsible person, or did not have adequate credit, or had a workload that did not permit him to continue, so we think those are not instances of bid shopping, so-called. They are not instances of capricious change or change only to save money. If the change is only to save money, then the money ought to go to the Government. If a man has a firm bid and he has somebody he can use and he has somebody on whose price he based his price, then that is one situation. If a subcontractor defaults it is another one.

Mr. POFF. I understand that subsection (g) is applicable after the contract has been awarded to the prime contractor, is that true?

Mr. GLASSIE. Yes, sir.

Mr. POFF. Assume that the prime contractor should exercise his option to make a substitution under subsection (g) and in making that substitution acquired a subcontractor at a lower cost. Would the prime contractor or the Federal Government benefit by that monetary saving?

Mr. GLASSIE. The Federal Government.

Mr. CRAMER. Not under that section.

Mr. POFF. That I believe is inconsistent with what you said before

Mr. GLASSIE. Excuse me, sir. Without looking at the bill, when you said (g) I was thinking of subsection (h). I am sorry. Under subsection (g) the right to change is based upon the failure or refusal of the subcontractor to enter into a contract. In that event the substitution may be permitted without any furher requirement.

Mr. POFF. However, if the substitution is in fact made and the substitute subcontractor submits a price lower than the original subcontractor, who gets the monetary benefit? The prime contractor or the Government?

Mr. GLASSIE. The prime contractor.

Mr. FORRESTER. Would the gentleman yield to me there?

Mr. CRAMER. Just a moment.

Does it not make it pretty much unilateral then in this respect? That other than when it is exercised under (h) and the prime contractor gets the advantage under (h), the Government does. That is looking at it from your standpoint, not from the Government standpoint. Is that correct?

Mr. GLASSIE. No, sir; I think it is just looking at it from the standpoint of ordinary equity. If I am a prime contractor and I have a firm responsible bid from Jones Electric to do a job for $100,000 and I choose for no reason at all to change to Smith Electric Co. or my reason is because Smith Electric Co. whispered in my ear that they will do it for $99,000, then that is $1,000 that belongs to the Government because the Government's price was based on the $100,000. However, if I as a prime contractor engaged Jones Electric Co. to do a job and base my price on it, $100,000, and he defaults and I am forced to find another one and I may have to pay $105,000 or I may get it for $95,000, that seems to me a business risk which should work both ways.

Mr. CRAMER. In subsection (f) if somebody whispers in his ear within the 5-day period he can change too?

Mr. GLASSIE. That is true and that is why we made the cautionary statements with regard to not abusing the 5-day period.

Mr. CRAMER. Under subsection (g) is it not true also, as I read it, that the person to determine whether or not the contract is being performed under the terms of the contract is the prime contractor? Not the Government, but the prime contractor determines whether or not subsection (g) comes into play.

Mr. GLASSIE. I imagine if the General Accounting Office felt there was a question about it they would take the necessary steps to recover any money that was coming to them.

Mr. CRAMER. That is the part I would like to get into, because that is what I think some people were disturbed about, according to the debate on the floor in the last bill. Who determines in your opinion whether or not under subsection (g) the subcontractor "shall fail or refuse to perform or complete the work"?

Of course the question of disqualification is under the Federal statute, but under that section who determines in the final analysis as to whether or not the work has not been performed or completed according to the contract?

Mr. GLASSIE. That determination is only pertinent to one thing, whether the Government is entitled to a refund or not, or a reduction or not, and of course that could not be a unilateral determination.

That would be a question of fact between the contractor and the Government, which would have to be resolved as any other question of fact under the contract between the two parties.

Mr. CRAMER. In other words, you believe that in subsection (g) both the prime contractor and the Government would have to make the determination that this work was being performed according to or not according to the terms of the contract?

Mr. GLASSIE. Probably there would be a clause in the contract, as there usually is, giving the contracting officer some authority to make it if it wasn't improperly made. That would be a matter for the Government contract form.

Mr. CRAMER. That would place substantial work on the Federal agency involved.

Mr. GLASSIE. Only in the event they were going to recover money thereby.

In other words, the only time the workload is on the Government is in the connection with reducing the contract price because of the saving. That would be a very well worthwhile workload, I should say, moneywise.

Mr. CRAMER. That is under subsection (h).

Mr. GLASSIE. Also involved in that would be the determination of whether you came under (g) or (h).

Mr. CRAMER. In other words, what you are saying is if the prime contractor makes a finding so far as he is concerned that the contract has not been lived up to under subsection (g) and substitutes somebody else, but the governmental agency involved makes the finding to the effect that the contract has been lived up to and therefore subsection (h) comes into play, then the difference would have to be paid to the Government, is that correct?

Mr. GLASSIE. That is correct.

Mr. CRAMER. In other words, the governmental agency is going to be required to make a finding in every instance under (g) and (h) as to whether or not the contract has been lived up to?

Mr. GLASSIE. In the event of a change in subcontractor and any question as to the reason of the change, the Government if it chooses to recover this money must look into it. If it does not want to recover the money it has lost nothing by not looking into it.

Mr. CRAMER. Do you not think the practice effect of it would be that each agency would have to investigate each instance of a change of a subcontractor outside of the 5-day limit to determine whether or not subsection (h) should come into play?

Mr. GLASSIE. Yes, insofar as an investigation is concerned. I would say in 99 cases out of a hundred it would be perfectly clear and there wouldn't be any problem about it.

Mr. CRAMER. Would you be agreeable to an amendment to subsection (g) which would have the effect that only in those instances where the subcontractor involved advises the governmental agency involved or, in the alternative, the prime contractor that the contract in his opinion was fully performed, and in that instance alone, should there be an investigation by the Federal Government?

Mr. GLASSIE. I would not have any objection to it, though I question whether that would fully protect the Government, because that might lead to some kind of deal between them of some sort to notify the Government, "I'll notify the Government that I defaulted so that you

can collect the $100,000 savings that belongs to the Government." It might lead to that sort of thing.

I always hate to presume that people are going to be dishonest, but sometimes they are.

Mr. CRAMER. Do you have any other suggestion as to how this workload could be lessened by an amendment to subsection (g)?

Mr. GLASSIE. The Government in administering a contract has these changes before it all the time. The contractor comes in any says, "I want to use vinyl plastic on the floor instead of asphalt tile," or vice versa. The contracting officer has a continual list of these things anyway. I do not think that the question of the instances, which are not going to be many, of changing an electrical or plumbing contractor under the contention that he has failed or refused to perform is going to be something that is going to occur very often. When it does, normally the facts will be perfectly clear. If they are not, then the Government has a real stake in looking into it because they are going to secure a real saving. They only have to look into it in the case where the cost is lower. If the cost is lower it is worthwhile looking into it because the Government is going to get that money.

Mr. CRAMER. I can see an equal chance of collusion, if you want to call it that, under subsection (h), where if he wants to substitute another subcontractor he just tells the other subcontractor how much he estimated in his initial bid for the work and asks him if he will do it for that much money. There is no saving involved at all under (h).

Mr. GLASSIE. (h) permits a prime contractor to change subcontractors, yes. If there is no difference in cost, naturally nothing goes back to the Government. If he wants to change he can change. A private contract law might restrict his freedom to some extent, but this bill wouldn't.

Mr. LANE. Mr. Forrester.

Mr. FORRESTER. I simply wanted to pursue the first question that you asked there, if you will permit me, which I was highly interested in. As I understood the gentleman's question and the answer, it is the contention of the witness and the proponents of this bill that this bill will save the Government and the taxpayer's money, is that correct?

Mr. GLASSIE. Yes, sir.

Mr. FORRESTER. I am highly interested in that because of course the gentleman knows that we have a budget before us now of approximately $72 billion, and of course the gentleman knows that the major portion of that budget relates to our defense.

I notice that in the testimony of the witness that the gentleman read I believe he said that there are $4 billion of contracts made by the Federal contracting agencies with the subcontractors in the course of a year; is that correct?

Mr. GLASSIE. It varies from year to year. The Federal construction I believe normally has run about $3 billion a year in the last few years. Of course in the emergency times it might be much more than that.

Mr. FORRESTER. Of course these are of such substance that the question does become highly material, does it not, as to whether this would or would not save money to the taxpayers?

Mr. GLASSIE. It certainly does.

Mr. FORRESTER. I am sure that the witness is sincere in his belief. Let me ask the gentleman this: If this bill was enacted into law and in the course of 1 or 2 years if the facts truly reflected that actually it had cost the taxpayers' money, would the gentleman and would the proponents of this bill recommend that this legislation be changed?

Mr. GLASSIE. I am inclined to think we would. We are interested in the Government saving money. We sincerely believe and believe experience has shown that this procedure will save money. It is inconceivable to me that any experience could demonstrate anything to the contrary.

Mr. FORRESTER. Could I get you to be just a little more stringent on that? I believe you used the word "included." If in the course of 12 months or 2 years it showed that it did cost the taxpayers money on this legislation, would the gentleman give the Congress the same fine assistance in getting rid of this legislation that he has given to the proponents in this legislation?

Mr. GLASSIE. I believe if we were convinced that this legislation resulted in additional cost to the Government we would want to have it repealed. We just do not believe that is a possibility.

Mr. FORRESTER. The gentleman is very astute. He still has not answered my question. Suppose the facts showed that they did lose money?

Mr. GLASSIE. If the facts so showed, then my belief in interpreting the opinion of the construction industry is that the entire industry would want the bill repealed, if that was the fact.

Mr. FORRESTER. Are these recommendations concerning the contracting the same kind of recommendations that you made last year?

Mr. GLASSIE. The recommendations?

Mr. FORRESTER. Yes; as to the methods of contracting.

Mr. GLASSIE. The bill is essentially the same as last year. The three differences are the preamble, expressing the intent to preserve the undivided responsibility of the prime contractor, the 5-day provision, and the provision permitting an affidavit of an attempt to secure a subcontractor without success. Those are essentially the only differences.

Mr. FORRESTER. Are those new suggestions, or suggestions that you gentlemen opposed last year?

Mr. GLASSIE. Those are totally new suggestions.

Mr. FORRESTER. All of them?

Mr. GLASSIE. All of them, yes, sir. They developed in a series of conferences starting in November or December of '56 and I think they are entirely new ideas.

Mr. FORRESTER. That is all, Mr. Chairman.

Mr. LANE. I do not want to prolong the questioning, Mr. Glassie, but just one more question, because the Department of the Army has also offered a new section, section 5, for the effective date of the enactment of the bill, 6 months after the enactment of the bill, in order that they can get their forms and recommendations up to date. Would you have any objections to that?

Mr. GLASSIE. My only objection to that is the time seems unduly long, I should think.

Mr. LANE. They say at section 5:

This act shall become effective 6 months after date of enactment.

They say so as to allow for changes in regulations and forms required to carry out the provisions of this new legislation.

Mr. GLASSIE. I think that 6 months is much too long. I have no objection to it in principle. I should say 30 days or even 60 days would be reasonable, but 6 months seems to me totally unreasonable.

Mr. LANE. Would you object to 3 months?

Mr. GLASSIE. I would not try to cut it that fine, Mr. Chairman. I think that you gentlemen are better equipped to answer that question than I am.

Mr. LANE. Are there any further questions? Mr. Cramer.

Mr. CRAMER. I have one additional question. I would like to explain generally that I am in favor of the bill. I supported it last time. There are I think some areas where there could be some clarification. With respect to section 3, the definition section, subsection (2), there is included in line 11, "without being limited to, buildings, bridges and tunnels," and so forth. There is no question, is there, under this act but what this act does not apply to the use of the new Federal highway program funds where the State lets the contracts?

Mr. GLASSIE. It would not apply for two reasons. First, the bill expressly excludes highways.

Mr. CRAMER. It includes bridges and tunnels.

Mr. GLASSIE. That is true, but as I understand the Federal highway construction program, these will not be Federal contracts.

Mr. CRAMER. No; they will be State contracts.

Mr. GLASSIE. This bill only applies to Federal contracts and whatever State procedure would govern under that highway program.

Mr. CRAMER. I wanted to make sure that was in and a part of the record.

Mr. GLASSIE. Some of the States would have such a listing provision which would be applicable and some of them would not have.

Mr. LANE. In that section 3, they also go on to talk about "to a point 5 feet outside the building line." Were those amendments brought to your attention?

Mr. GLASSIE. The Army proposal that the words "to a point 5 feet outside the building line" be added?

Mr. LANE. Section 3, page 7, line 22.

Mr. GLASSIE. It does not seem to be entirely consistent.

I think naturally with respect to any one contract the bill will only apply to whatever construction is provided in that contract. Normally, I would say a construction contract is limited in its terms, and construction of a building covers utilities to 5 feet outside of the construction line. That is a rule of thumb frequently used in the industry, but it seems to me entirely out of place to be added here.

Mr. LANE. The next one too? Section 3, page 7, line 25, insert the word "building" again in there.

Mr. GLASSIE. I cannot understand what they are driving at on that one, Mr. Chairman. It seems to me to be confusing, "building mechanical specialty work." To me it is confusing. I really don't understand it.

There is one change, however, that I would like to comment on, which I think is probably the only one of any substance that the Department of Defense has suggested here. They have suggested that a proviso

be added to section 2 (b) stating as follows—this 2 (b) is the essence of the bill providing that the subcontractor shall be listed. It says:

Provided further, however, That if the general contractor shall fail or refuse to comply with the requirements of the immediately preceding proviso the executive agency shall not be precluded from awarding the construction contract to the general contractor, nor shall the general contractor be relieved of any responsibility for the performance of the construction contract in the event the contract is awarded to him.

I am not positive I understand that, but it seems to me that means that the contractor is free to comply with the bill or not comply with the bill as he chooses, which would seem to me to be an incredible provision. Having read this thing very quickly I may be missing the point there, but if that is the intent of it we certainly could not go along with that.

Mr. BRICKFIELD. I would like to ask Mr. Glassie a question on that point.

Suppose 5 days expire from the time the bids are opened and the prime contractor has not submitted the name of the subcontractor with whom he will contract. What happens then? Is his bid automatically invalidated and a penalty inflicted by the Government?

Mr. GLASSIE. I should think it would follow the rules laid down from time to time in the decision of the Comptroller General about mistakes in bidding and so forth, whether you leave your seal off, or you forget to sign it right. The Government can when it is to the benefit of the Government overlook these things at its option.

Mr. BRICKFIELD. Suppose within 5 days' time he has not given the name of the mechanical specialty contractor and his is the lowest bid?

Mr. GLASSIE. Certainly, if he refuses to give it I cannot see that the Government could do anything but reject it. If he fails by some inadvertence or ended late on it, those things are frequently waived by the Government when it is to their benefit to waive them.

Mr. BRICKFIELD. The language of the bill is very explicit and it uses mandatory language, and it says that the prime shall submit the names of the subcontractors. I was thinking in the event there was a failure to comply with this provision by not submitting the name of a subcontractor.

Mr. GLASSIE. Perhaps I am misreading this proviso here that they have suggested. Maybe they intend that to apply only to this little tiny part of the bill, not to the whole section. If that is correct I don't know that it makes much difference.

Mr. BRICKFIELD. Let me ask a further question. Supposing that there are five prime bids submitted. Must all 5 bids submit the names of the subcontractors within 5 days, or would it be just the bid that was accepted by the Government?

Mr. GLASSIE. Mr. Brickfield, the bill provides that in your bid you submit the names of the subcontractors. It is only if you are able to attach an affidavit or certificate that you have made this effort to secure a subbid and have not gotten one—this is something that happens once in 10,000 times—that you submit them later. It is only in that single instance.

Mr. BRICKFIELD. Assuming that you submitted the affidavit and you said you were unable to find the subcontractors and the bids were opened and the contract was awarded to a particular prime con-

tractor and within 5 days time after the opening of bids he was still unable to submit the names of subcontractors?

Mr. GLASSIE. As a practical matter the contract would be awarded in such a 5-day period.

Mr. BRICKFIELD. I doubt that your reply answers my question. Let me ask you a question of practice.

When the bids are opened, I assume at a public session, how long thereafter is the contract awarded?

Mr. GLASSIE. I would say they average 10 to 60 days.

Mr. BRICKFIELD. And supposing at the end of 10 or 60 days the contract is awarded. The time will have lapsed as I understand the language of this bill for the prime contractor to have submitted the names of the subcontractors, because this language says within 5 days from the opening of the bid.

Mr. GLASSIE. That is in the event he could not name one first? He got none and they just refused or failed within the 5-day period? I suppose he has an incomplete bid. I do not think we can anticipate all the rulings of the Comptroller General on that in advance, though. He might want to hold him to his price.

If this language then relates only to that one situation I don't see any objection to it. If this language "further provide" relates to the whole section 2 (b), then obviously it would thwart the whole purpose of the bill.

Mr. CRAMER. Would counsel yield on that?

Mr. BRICKFIELD. Yes.

Mr. CRAMER. Do you not think that the language of the act being mandatory would require the Government agency at the end of the 5-day period to void the bid?

Mr. GLASSIE. I should assume that would be the ruling, if there was a refusal.

Mr. CRAMER. Assuming then that that be the case and the next lowest bids were substantially higher than the initial bid, that would cost the Government a lot of money; would it not?

Mr. GLASSIE. Yes. If this was just a mistake, such as frequently happens, of failure to properly execute or fill in a line, or put the figure in, the Government under the rulings of the General Accounting Office has authority to waive that mistake where it would benefit the Government to waive it, and I suppose that would carry over into this bill.

Mr. CRAMER. There is no discretion in the bill permitted to anyone, as I read the bill. It says "shall" and "must."

I am sympathetic to the bill, understand, but there is no manner in which it appears that the purpose of the bill can be properly carried out. There is nothing in the bill itself to instruct the Government agencies as to what to do other than if it isn't complied with the bid is null and void.

Mr. GLASSIE. Possibly I didn't make myself clear. I think that is true. There has been experience under the Massachusetts statute and the Massachusetts Court of Appeals has held that if the act requires the subcontractor to be named and the contractor doesn't name him, he hasn't submitted a responsive bid and it shall not be considered.

Mr. FORRESTER. He wouldn't be allowed to sue?

Mr. GLASSIE. I do not know that there has been any such holding, but he is not entitled to the contract. However, I do not believe that

would extend so far as if he inadvertently made the name wrong or maybe there were clerical mistakes, or improper signing, or something of that sort.

Mr. CRAMER. There should be a mutuality of remedy on the point that the gentleman from Georgia raised. If in fact the Government is relieved after the 5-day period, the general contractor should be relieved. Otherwise there is no mutuality of remedy in the legislation.

Mr. GLASSIE. You don't always get mutuality of remedy in dealing with the Government, I can assure you, but I assume that would follow. I cannot imagine that the general contractors are going to deliberately not comply with the bill. If they do they will soon find out it is their own mistake.

Mr. CRAMER. Suppose within the 5-day period they realize they made a mistake, that they put in a bid which is too low? All they have to do is not comply with the 5-day requirement and they are out.

For instance, suppose—and I have seen it happen in some of these county government contracts where they submit a competitive bid—the next bidder is substantially higher, 15, 20, 25, 30 percent higher than the initial bidder after the bid has been accepted. Of course it is too late. He goes back and finds he made a mistake, but he is going to do that immediately to find out why his bid is so much lower than the other fellow, and in this instance all he has to do is not comply with the 5-day period requirement and he is relieved of any bid responsibility.

Mr. GLASSIE. But you are limited there to this: First, you are assuming that this contractor has not listed any subcontractor.

Mr. CRAMER. That is correct. That is what this provides for.

Mr. BOYLE. That has to apply.

Mr. CRAMER. That is what the subsection provides for.

Mr. GLASSIE. If in the event the prime contractor has not listed the subcontractor, but submitted a statement as provided in 2(b), then if this committee feels that this "provided further" gives the executive agency the right to take the bid or not take it, we would have no objection to that, limited only to the instance where the subcontractor was not listed in the beginning.

Mr. CRAMER. In other words, in that particular subsection you would not object to leaving it discretionary with the agency?

Mr. GLASSIE. No, I would not, but if that applied to the whole section 2(b) it would mean the prime contractor could comply or not comply as he chose.

Mr. CRAMER. I hope you will understand I just got this about 15 minutes before the hearing started. If that only applies to the instances in which those subcontractors are not listed, we certainly would not have any objection to it.

Mr. BRICKFIELD. Suppose a situation where the contract is awarded within 2 days after the opening of the bid and it is given to the lowest responsible prime contractor and within the 5-day period he has not submitted the name of the subcontractor. Is there a breach of contract on his part?

Mr. GLASSIE. Mr. Brickfield, will you explain that again?

Mr. BRICKFIELD. Assuming that the bids are opened on the first day and 2 days later the contract is awarded, and within that 5-day period——

Mr. GLASSIE. You are also assuming that the man did not list any subcontractor.

Mr. BRICKFIELD. That is right. I am asking this question in relation to section 2(b).

Mr. GLASSIE. The provision of 2(b)?

Mr. BRICKFIELD. Yes—and at the end of the 5 days the prime contractor has not submitted the names of the subcontractor with whom he will do business. Does the Government have a right of action against the prime contractor for a breach of the contract that was awarded on the second day?

Mr. GLASSIE. I think you are making a couple of very violent assumptions there, such as the award of a contract 2 days after the bid opening, but, yes, I would say the contractor would be in default.

Mr. BRICKFIELD. Of course there was testimony last year that quite often in doing business with prime contractors with whom they had previously done business the Government can make the award at the same time that the bids are opened. I do not think my assumption that they would make an award within a short time after the bids are opened is farfetched.

Mr. GLASSIE. It is possible they would make an award within the 5-day period. If they have a contract within the 5-day period, then I suppose the contractor would be in default under his contract.

Mr. FORRESTER. Let me ask counsel this: Was there not testimony in the record last year that sometimes on matters of defense you had to move very speedily indeed?

Mr. BRICKFIELD. Yes, sir.

Mr. FORRESTER. That they did award those contracts immediately?

Mr. GLASSIE. Mr. Forrester, my only experience has been quite the contrary in dealing with Government agencies. They usually are in a great hurry to get the bids and frequently give you about 15 days when the general contractor has to figure a tremendously complex job, maybe involving $20 million, and they say, "You can't have 20. You must do it in 15 days." Then I usually find they wait around 6 months after that to award the contract.

Mr. FORRESTER. What would happen though if we got into war? Would that still apply, or wouldn't the military find that they had to contract at the earliest possible moment?

Mr. GLASSIE. I think this question of a contractor not listing because he has been unable to get a bid is something that would not happen once in 10,000 times anyway, but to get back to the military exigency, the bill provides that it may be waived in that event.

Mr. FORRESTER. Whether it would help them or not, do you not think actually the answer to Mr. Brickfield's question is that where there had been an offer and there had been an acceptance, and then there had been a breach, it would follow that as a matter of law the Government would have a right of action against the person who made the bid and had the bid accepted?

Mr. GLASSIE. Yes, sir, that was my answer. I assume so.

Mr. FORRESTER. Would it not also follow that as a matter of fact if the Government wants they could chose to stand on that contract and insist upon the prime contractor performing, the one they gave the award to?

Mr. GLASSIE. Yes, I think so.

Mr. FORRESTER. That would be my idea.

Mr. BRICKFIELD. I do not believe that there is such a thing as specific performance in public contracts.

Mr. FORRESTER. Not specific performance, but there is such a thing as making him wish he had performed by a first class damage suit.

Mr. BRICKFIELD. The Government would be entitled to damages.

Mr. FORRESTER. I agree with you there would be no specific performance involved.

Mr. LANE. Are there any more questions?

Mr. GLASSIE. This whole business of the permission in this bill for contractors to submit a statement in lieu of listing is only to cover something that would happen very rarely, if at all. Normally a prime contractor is not able to guide himself unless he has the name of a subcontractor, because how would he make up his price, so the chances of this proviso being put into operation is extremely remote, but the Associated General Contractors want it and we certainly do not see any objection to it.

Mr. FORRESTER. If the gentleman will pardon me, I expect he was here last year?

Mr. GLASSIE. Yes, sir.

Mr. FORRESTER. Of course now there has been a lapse of a year and I may get the towns wrong, but I think there was some contractor from Florida who testified that he made a Government contract to erect a building down in Orlando, Fla.

Mr. GLASSIE. Mr. Rooney.

Mr. FORRESTER. And subcontractors agreed to do that work for a certain price, and that then he had the option to make another bid, probably at Sarasota, Fla., and the subcontractors who gave him bids at that time had their bids more than double what they were in a contract to do the work at Orlando, and he said, "Of course I had to hurry with my bid, had to get my bid in, and I knew that I would lose a contract if I stood upon what these subcontractors said down at Sarasota they were going to charge me, but I operated on the idea I could get those same boys who did this work for me in Orlando and I took a chance and I bid. I got the contract and I did get those fellows down there at Orlando. They came in and they did the work for the same price."

I believe I am quoting it substantially correct.

Mr. GLASSIE. Yes, Mr. Rooney's very eloquent exposition of that problem persuaded us that perhaps this 5-day period which you could change was proper and that is the purpose of the very thing you are bringing up, the purpose of permitting the prime contractor to change without other restriction within 5 days after the bid opening, this 5-day period being considered by the industry as ample to take care of any such problem.

Mr. LANE. Thank you very much, Mr. Glassie.

Mr. GLASSIE. Thank you, Mr. Chairman. I appreciate very much the chance to be here.

Mr. LANE. The next witness will be Mr. William E. Dunn, assistant executive director, the Associated General Contractors of America, Inc., 1227 Munsey Building, Washington, D. C. I understand he is anxious to get a plane.

Mr. DUNN. Mr. Chairman, Mr. Volpe is here and will testify for the Associated General Contractors.

Mr. LANE. We are glad to have John Volpe, former commissioner of public works in Massachusetts. He is always welcome before a committee with two Congressmen from Massachusetts.

Commissioner Volpe, we are pleased and happy to have you with us. We know that you have been an outstanding general contractor, not only in Massachusetts, but in United States and outside of continental United States.

TESTIMONY OF JOHN A. VOLPE, CHAIRMAN, SUBCONTRACTING PROCEDURES COMMITTEE, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

Mr. VOLPE. Thank you, Mr. Chairman.

My name is John A. Volpe, president of the John A. Volpe Construction Co., Malden, Mass. Our firm has been engaged in building construction since 1933.

I appear before you today as chairman of the subcontracting procedures committee of the Associated General Contractors of America, and as a member of the advisory board of the AGC. The association represents more than 6,700 construction firms in all parts of the country, which execute the majority of contract construction in the Nation each year, as well as substantial overseas operations.

Last week the Associated General Contractors held its 38th annual convention here in Washington, D. C., from March 11 to 14, 1957. After a thorough discussion of the subject of subcontractor relationships and pending legislation, including H. R. 3339 and related bills, the convention passed the following resolution:

> As a means of seeking to improve the relationships between general contractors and subcontractors in the construction industry, the 38th Annual Convention of the Associated General Contractors of America, held in Washington, D. C., March 11, 1957, offers no objection to the principles stated in the several identical bills titled "Federal Construction Contract Procedures Act," as introduced in the 85th Congress, 1st session.
>
> In the event that amendments are offered to modify the legislation in a manner detrimental to general contractors, the convention recommends opposition to such amendments, to the extent of opposing the entire bill if necessary.
>
> The association approves the principle that in matters of mutual interest the cooperation of national and local associations of general contractors and subcontractors should be encouraged.
>
> It reaffirms its conviction that the best interests of the owner of a construction project are served by use of the single contract system under which the general contractor is solely responsible to the owner and has undivided responsibility and full control and authority to coordinate and complete the work.

We wish to emphasize that it was the sense of the convention that the difficulties which interfere with good subcontractor and general contractor relationships cannot be cured by legislation. Improved relationships can be attained only by an attitude of good will and cooperation of the leadership of all segments of the construction industry. As witnesses have testified concerning previous bills on this subject, the degree to which there is unethical practice in the handling of mechanical and specialty subbids, commonly called bid peddling on the part of the subcontractor and bid shopping on the part of the general contractor, is certainly relatively small considering the record volume of construction which has been increasing yearly. Nevertheless, as a result of this continual fight over such legislation, we have found a gulf between these important segments of the industry, namely, the general contractor and his associates on a construction project, the mechanical and specialty contractors.

Thus, it was in a spirit of cooperation that last fall, the president of the AGC, Frank J. Rooney, of Miami, invited the presidents of the leading mechanical and specialty contracting groups to meet with him in order to find a common solution of our mutual problem outside the realm of legislation. It was felt by the spokesmen for the mechanical and specialty groups that existing laws made it impossible for us to work together to improve the ethical standards of our industry. There were many meetings, some of which were rather heated but later conducted in an atmosphere of friendship and constructive thinking.

The general contractor representatives pointed out the objectionable features of previous bills which we felt were neither equitable nor practical. Bills under consideration, H. R. 3241, 3339, 3340, 3810, reflect a constructive approach in overcoming these objections. We are gratified to see that in the preamble of the proposed legislation, authors of the identical bills which I have just referred to state that it is in the best interests of the Federal Government to use the single contract system in procuring its buildings.

As a result of discussions at our convention, we would like to make the following constructive suggestions with regard to the above-mentioned identical bills:

(1) We suggest that on page 2, line 9, that there be added after the words "general contractors or" the words "bid peddling by", so that the lines 7 to 11 read:

*** * * and that such procedures should be so established as to eliminate the unfair trade practice of bid shopping by general contractors or bid peddling by subcontractors and other unfair trade practices in connection with bidding on Federal work.**

The reason for this is to recognize that bid peddling on the part of subcontractors is an unfair trade practice, the same as bid shopping is, on the part of the general contractor.

(2) On page 3, line 16, it is suggested that the words "of the date of the opening of the bids" be changed to read, "after the date of the opening of the bids".

I believe one of the members of the committee made the suggestion a little earlier.

Mr. LANE. Yes; Congressman Poff.

Mr. VOLPE. (3) On page 3, line 22, the words "or any part thereof" be inserted after the words "specialty work", so that the section reads, beginning on line 20:

This section shall not prevent any general contractor from himself performing any major category of mechanical specialty work, or any part thereof, under a lump-sum construction contract * * *

It is also suggested that the words "major category" on page 4, line 2, be stricken in order to complete the sense of the changes in subsection (c) of section 2.

The purpose of these changes is to permit the general contractor to do all or part of the mechanical work that he is able and intends to perform.

(4) We suggest that (f), on page 4, be revised to read as follows (new words italicized):

A general contractor who submits a bid *or proposal* with respect to a lump-sum construction contract may, at any time within five days (Saturdays, Sundays, and Federal holidays excepted) *after* the date of the opening of the bids *or proposals* therefor, engage a substitute or different contractor from the one

named in accordance with subsection (b) to perform any major category of mechanical specialty work; *or any part thereof: Provided,* That within such period he notifies the contracting executive agency in writing of the name of the substitute contractor.

The reason for this suggestion is to put all lump-sum contracts on the same basis for the purposes of this section (to conform with sec. 2 (b)), and to make changes in language in the interest of consistency.

(5) On page 5, line 8, it is suggested that after the word "subbid" there be added the words "or the invitation therefor", thus the paragraph (g) would read as follows (new language italicized):

If a contractor named by the general contractor under a lump-sum construction contract in accordance with subsection (b) of this section shall refuse to enter into a contract in accordance with his subbid therefor or shall fail or refuse to post a performance bond which was to be furnished under the terms of the subbid *or the invitation therefor, or shall fail to furnish a requested affidavit stating there was no collusion in the preparation of his bid,* or shall fail or refuse to perform or complete the work to be performed by him in accordance with the terms of his subcontract therefor or if such contractor shall be disqualified or be determined to be unqualified to perform such work by or under any applicable Federal statute or any Federal governmental order, ruling, or determination, the general contractor at any time may engage a substitute or different contractor to perform such work: *Provided,* That he first notifies the contracting executive agency in writing of the name of the substitute contractor.

This would have the effect of giving the subcontractor ample notice that a performance bond and a noncollusion affidavit were requested in the invitation to bid.

(6) On page 6, line 19, it is suggested that the amount of "$100,000" be changed to read "$200,000" thus, the section would read that the act would not apply to—

Proposed contracts which are estimated by the contracting agency to involve less than $200,000.

This is to eliminate unnecesary detail and record keeping on relatively small contracts.

(7) It is suggested that on page 7, line 5, after the words "Government corporation" there be added the following words, "and any chief officer responsible for procurement of such executive or independent establishment." Thus, the paragraph would read:

The term "executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation and any chief officer responsible for procurement of such executive or independent establishment.

The reason for this suggestion is to make this section consistent with other provisions of the bill, particularly that which appears on page 6, line 20, describing the official of the executive agency who has power to act.

(8) It is suggested on page 7, lines 11 and 12, the words "bridges and tunnels" be stricken from the definition of construction contract.

The reason for this is that throughout the bill and particularly in the preamble, reference is made to the construction of buildings. To include bridges and tunnels is to extend the proposed law to an area which is not consistent with the principles of the bill and which would be difficult to administer. A further objection is that in many instances, bridges and tunnels are included in highway contracts, and as has already brought out, practically all of which are undertaken through State highway departments.

(9) It is suggested that on page 7, lines 21 and 22, the words "installation of sewer, drainage, and water supply piping" be stricken because they are superfluous and confuse the purposes and application of the bill.

The terms "sewer drainage and water supply piping" are covered under other language of the definition of mechanical and specialty work, namely, "plumbing and piping."

Because of practical considerations and historical differences between building construction and utility and engineering construction, it is most desirable that this definition of "mechanical and specialty work" not include any reference to sewage, drainage, and water-supply piping. The type of contractor and even the unions involved in the construction of buildings very considerably from the types of contractor and labor organizations and the skills of workmen involved in sewer, drainage and water-supply piping construction work.

In conclusion, although we still believe that Government intervention will not be the cureall in the area of relationships between general contractors and mechanical specialty contractors, it is felt that the coming together of these two important segments in the construction industry will bring beneficial results. The leaders of the mechanical and specialty contractors are to be commended, together with the leaders of our own industry, for the spirit of cooperation which has prompted this feeling of understanding. If the legislation provides the medium for continuing good will and relationships between the various segments of the industry, then the legislation may have served a useful purpose.

Again, we emphasize one of the most pleasing parts of this bill is its preamble, which so forcefully states the important role played by the general contractor in the single contract responsibility, which is recognized by all Government agencies, which is deemed in the public interest to safeguard public funds.

Gentlemen, we may desire with your permission to submit a supplemental statement after more fully analyzing all suggestions made at our convention.

Mr. LANE. We will be glad to have it any time within a reasonable period of time.

Mr. VOLPE. Yes, sir. Thank you.

Mr. LANE. Thank you, Mr. Volpe.

Mr. FORRESTER. Does this reflect the sentiments of the Associated General Contractors of America, or is this simply on your part as president of the John A. Volpe Construction Co.?

Mr. VOLPE. Basically I am here as the chairman of the subcontracting procedures committee of the association and the statement of course quotes a convention resolution which was adopted by the convention. Therefore, I would answer your question by saying that basically it is a statement of the association rather than my own personal statement.

Mr. FORRESTER. That is what I am trying to find out, because I am trying to find out how much work we are going to have to do. If this reflects the sentiment of the association then we have those suggestions and recommendations. If it does not, of course we will probably have to hear some other witnesses as to your contention.

Mr. VOLPE. It basically reflects the association's sentiment; yes, sir.

Mr. LANE. Are there any further questions?

Mr. CRAMER. May I ask just one question?

Mr. LANE. Yes, Mr. Cramer.

Mr. CRAMER. With respect to this question of the use of the single contract system as set out in subsection (b), do you know to what extent the Government today uses that system as compared to the other two systems that were pointed out in the testimony of Mr. Geary?

Mr. VOLPE. In the Federal construction agencies?

Mr. CRAMER. Yes.

Mr. VOLPE. I think that the single contract system is used almost exclusively under the present Government contracts.

Mr. CRAMER. Do I understand correctly that it would be no substantial departure from present procedure, but this is a straitjacket permitting them only to use the single contract system?

Mr. VOLPE. I do not believe it would be any departure from present practice.

Mr. CRAMER. Do you so construe that that would be the effect of this bill, to permit them only to use in the future the single contract system for all construction within the definition of this bill?

Mr. VOLPE. I would not believe it would be mandatory, Congressman. Subsection 1 (b) says:

It appears desirable, and in the best interests of the Federal Government, for the Federal Government in contracting for the construction of buildings * * *

I don't believe it is mandatory.

Mr. CRAMER. That is all, Mr. Chairman.

Mr. LANE. Are there any further questions?

Mr. BOYLE. Yes, I have.

Mr. LANE. Mr. Boyle.

Mr. BOYLE. I have just a couple of questions. Not that I expect you to reconcile any testimony that has been introduced here today, but I anticipate that somewhere along in this bill there may be an amendment offered where it will encompass not only the specialty contractors, but probably all subcontractors. I would like to ask you what type of work does the John A. Volpe Construction Co. do?

Mr. VOLPE. Primarily institutional buildings, sir, and some military construction.

Mr. BOYLE. In connection with that institutional or military institutional work, what part of the complete institutional work would your company do?

Mr. VOLPE. Our company normally performs the excavation, the concrete work, the carpentry work, the masonry work, and some other related items, cement finishing, and so forth. We, as is the custom with I think the bulk of general contractors, sublet our mechanical specialty work, plus the roofing.

Mr. BOYLE. I am very much in sympathy with this bill and I think it will firm up bids. I wanted to ask you, would you have any objections if it applied to all subcontractors in this whole area?

Mr. VOLPE. Speaking personally, and not for the association, I would have objection; yes, sir.

Mr. BOYLE. Why?

Mr. VOLPE. I would only say to you that I have had some experience in Massachusetts with this type of law. I do not want to throw

cold water on this situation. I am sure our leaders and the leaders of the mechanical specialty subtrades have attempted to work out something here that might get us closer together, but the experience in Massachusetts, in my humble opinion—and I have been in the public service in the last 4 years, so I cannot speak in the last 4 years from the contractor's side of the fence, having been with the government's Massachusetts public works and here in Washington for the Federal Government for a short period—is if you think that the quarreling we have done over the last 10 years in trying to get some type of legislation on the books has been irritating, you will find that over the course of the next 10 years, my dear friends, you will have a great deal more gnat's teeth than you have had in the past 10 years, because there will definitely be requests for amendments to this bill. In Massachusetts we have had requests every year since the bill was introduced first and placed on the statute books. There have been amendments suggested every year. Not every year did they approve amendments, but in many of the years amendments were approved, so that there have been many changes.

You are trying to legislate in a field where it is extremely difficult to legislate. I do not feel it would be practicable. I can see some justification for perhaps these specialty contractors because they do represent a rather substantial part of the work and in many cases are very specialized and complicated, whereas in some of the other subcontract fields they are not quite that specialized and in a sense of course you are giving them a protection, if you want to call it that. I do not believe it is, but, as the Army has pointed out, you are giving them a protection which you are not giving to other subcontractors.

Mr. BOYLE. That is the question I wanted you to cover.

One other question: Do you feel that this is just about as far as we legislators can go in this area at the present time?

Mr. VOLPE. I will just say "Yes."

Mr. LANE. Mr. Volpe, in view of the fact that we have now a quorum call, and further that you are anxious to go, I think that Mr. Dunn will be here, because we have a few more questions we would like to ask in reference to negotiated contracts and a few more things, so will you stay here this afternoon, please?

Mr. VOLPE. What time will you be reconvening your committee?

Mr. LANE. We will come back at 2 o'clock. You do not need to come. You can be excused and we can ask Mr. Dunn the questions.

Mr. VOLPE. If I can modify my plane reservation I can make it 1 hour later without getting into difficulty.

Mr. LANE. It is not necessary. If you came back, all right. If you do not, all right.

Thank you very much, Mr. Volpe.

Mr. VOLPE. Thank you very much.

(Thereupon, at 12:50 p. m., the committee recessed, to reconvene at 2 p. m., the same day.)

AFTER RECESS

Mr. LANE. The committee will reconvene, please.

Mr. Volpe, will you be seated? I had just 2 or 3 questions to ask of you. If the other members come in they will propound their questions, if they have questions.

TESTIMONY OF JOHN A. VOLPE, CHAIRMAN, SUBCONTRACTING PROCEDURES COMMITTEE, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.—Resumed

Mr. LANE. On page 3, Mr. Volpe, you suggest adding the words "bid peddling by." In other words, I assume that you want to make sure that this is not just a one-way street, not just a bid shopping by the general contractors but that, on the other side of the picture, we have bid peddling by the subcontractors. In other words, it works both ways.

Mr. VOLPE. It takes two to work a deal, Mr. Chairman.

Mr. LANE. That is the purpose of that first amendment which you suggest.

Now was there any particular reason why you wished to have it amended from $100,000 to $200,000? Just why was it that the Associated General Contractors felt that that ought to be $200,000 instead of $100,000?

Mr. VOLPE. Mr. Chairman, I would say that there is quite a bit of administrative machinery that will be required in connection with the execution of contracts under this bill. It seems to us that on contracts of even $200,000, the savings that might accrue would not, because of the nature and size of the mechanical work involved, justify going through the administrative actions necessary to undertake this work. Some of the agencies, of course, have quite a few of these smaller projects. Some members thought the figure ought to be $300,000. We thought that we would submit a figure which we felt could reasonably be said to be a compromise.

Mr. LANE. Your group feels that $200,000 is a fair amount?

Mr. VOLPE. Yes, sir; we do.

Mr. LANE. Mr. Brickfield, our counsel, wanted to ask a question or two about negotiated contracts.

Mr. BRICKFIELD. Is there objection of the Association of General Contractors to the negotiated contract provisions of the bill?

Mr. VOLPE. I do not know that we have objections to it. As a matter of fact, we have asked that the words "competitive bidding" be eliminated, just leaving the language as it is in the earlier part of the bill on lump-sum construction contracts.

Mr. BRICKFIELD. I notice that on page 4 of your statement, you propose in a paragraph marked 4, to eliminate the "proposal."

Mr. VOLPE. We are asking that that be added, "bid or proposal."

Mr. BRICKFIELD. Is not that language presently in the bill?

Mr. VOLPE. I do not believe it is. It is not in that section.

Mr. LANE. That is an amendment similar to the amendment to be offered later by the Secretary of the Army.

Mr. VOLPE. In Section (f) on page 4 of the bill, it says:

> A general contractor who submits a bid * * *

It does not say "a bid or proposal."

We are asking that "or proposal" be added, so that we are not objecting to what are called negotiated contracts.

Actually, as was explained earlier, the only distinction between a lump-sum contract and a fixed-fee contract is that lump-sum contracts can be entered into as a result of advertising competitive bidding or can be entered into as a result of the agency asking a selected group

of bidders to bid and then the agency doing business with the lowest of those firms, or the lowest responsible bidder, or, in the judgment of the agency, the firm that would best perform the work for them. That is considered a negotiated contract, although in a sense it is still a competitive job in a way.

Mr. BRICKFIELD. Do you ever have a situation when the Government negotiates a contract with an individual prime contractor where the negotiations would be spread out over a period of weeks or months?

Mr. VOLPE. Generally speaking, the policy of the Government, even on fixed fee or negotiated work where they actually do not take bids as such has been to consult generally with three firms. I believe it would be only on very, very rare occasions that the Government would be negotiating with one firm alone. I know that in connection with some Navy work involving substantial construction overseas they had, for instance, a long list of bidders or contractors who desired to participate in the construction. That was narrowed down to three. They talked with all of these three firms, and finally chose one of the combines to do the job.

Those negotiations, of course, did spread over a lengthy period. That was, however, a fixed-fee contract.

Mr. BRICKFIELD. Would you ever have a situation, where it was not a cost-plus-fixed-fee contract, when the negotiations would be spread out over 3 or 4 weeks, or maybe several months?

Mr. VOLPE. That could be.

Mr. BRICKFIELD. Would there be any difficulty in the procedures regarding the submission of bids by subcontractors?

Mr. VOLPE. That could arise, but I would think that in those cases the agency probably would take advantage of the stipulation in the bill that would provide for not having this bill apply in that particular contract. It reads:

> Any proposed contract with specific reference to which a chief officer responsible for procurement, of the executive agency which is to award the contract, determines that the procedure prescribed herein would result in undue delay and that the public exigency or military necessity will not admit of such delay * * *.

I would think that in that type of situation the agency certainly would probably take advantage of that particular clause.

Mr. BRICKFIELD. I would like to ask a question on another category.

Mr. VOLPE. I think your suggested amendment is to change the minimum amount of the contracts from $100,000 to a limitation of $200,000, is that correct?

Mr. VOLPE. Yes.

Mr. BRICKFIELD. Is that based on any statistical data which you may have, or is it a considered guess as to what you feel the monetary ceiling should be?

Mr. LANE. Mr. Volpe just answered that question to me. I asked about that while you were out, but you may reply again.

Mr. VOLPE. I will say the same thing that I said to the chairman, that there is quite a bit of administrative machinery which the agencies of Government will have to set up in order to live under this bill, and we feel that perhaps on the smaller projects it would be desirable not to have to go through that type of machinery, and certainly, with the value of the dollar as it is today, contracts of $200,000 are not

considered very large contracts. The $200,000 is not based on a formula at which we have arrived. We could just as well have said $250,000 or $300,000, and some thought that the minimum ought to be a half million dollars. The $200,000 figure is a figure which represents, perhaps, a compromise within our own group.

Mr. LANE. Mr. Volpe, another of your amendments is to strike out the words "bridges and tunnels." Of course, we heard your statement about the fact that the title of the bill has to do with building construction.

I was wondering if you could add anything further to your statement in reference to the reasons why you are desirous of having the words "bridges and tunnels" stricken, besides what you outlined here?

Mr. VOLPE. I would be glad to do so, Mr. Chairman. I would say that basically bridges and tunnels are not in the same category of construction as building construction. On bridges you do not have the subcontractors, generally, that you have on a building project. It is an entirely different type of work, generally performed by different contractors than those who operate in the field in which this bill has its main objectives.

In addition to that, generally speaking, bridges in many cases are a part of a highway contract. In Massachusetts, for instance, when we advertise for bids, we advertise for our bridges in conjunction with our highway work. Of course, this bill applies only to Federal work, and you might say that there are not too many bridges and tunnels done by the Federal Government. If not, why have it in the bill?

It seems to me, having been head of the Bureau of Public Works for a few months, that I can say that they do not have generally too much bridge and tunnel work done directly by the Federal Government. It is done in rare instances, in forestry, and things of that nature, where they have a few projects with which they let direct. It seemed to me that in those cases, if you had bridges in the bill it would mean that they would have to break out the bridges separately from the highway work and take separate bids on it because of the fact that this bill would apply on the bridge phase of it, even though in most cases you would probably have no mechanical work involved.

Generally speaking, the only work on the bridge affected by this bill would be the electrical work.

Of course, there is usually no heating or plumbing in bridge work except in Boston, where we have heated the ramps on the central artery to melt the snow. Other than that, there would not be a heating and plumbing contract on a bridge job.

Mr. LANE. You can speak not only as a general contractor, but from your experience with the United States Government in your capacity in charge of public-roads programs.

Mr. VOLPE. Yes, sir.

Mr. LANE. For the record, when did you terminate your employment with the Government?

Mr. VOLPE. February 5, sir.

Mr. LANE. What was the title of your position?

Mr. VOLPE. Federal Highway Administrator.

Mr. LANE. Mr. Forrester, do you have a question?

Mr. FORRESTER. I have no questions.

Mr. LANE. Mr. Cramer?

Mr. CRAMER. Just very briefly, is it your understanding from subsection (g) of section 2 that it is a joint determination by the prime contractor and the governmental agency involved? If so, is that satisfactory to the contractors?

Mr. VOLPE. Mr. Congressman, I would say that basically the language here seems to indicate to me that it would be in the hands of the general contractor, except that if the subcontractor violated some Federal statute, the agency might call it to the attention of the general contractor. Basically, it would be a prerogative of the general contractor to note this, and the requirement is that, before he takes the action, he just notifies the contracting agency.

Mr. CRAMER. In reading subsection (g) that was the impression that I got, but, in interrogating the representative of the Electrical Contractors' Association, his interpretation, as I recall, was that in his opinion it would require a determination on the part of both the subcontractor and the Government agency.

Mr. VOLPE. I do not believe that that would apply, except in such cases, for instance, where a subcontractor had been blacklisted, and, under the provision which provides that he shall be disqualified or determined to be unqualified to perform such work by or under any Federal statute or Government order, ruling, and so forth, there the subcontractor might have been blacklisted, and the agency itself might call attention to that fact and jointly, with the general contractor, decide to make a substitution.

Mr. CRAMER. There is no question about that portion of the subsection. I was concerned with lines 7 through 10 in which it says:

or shall fail or refuse to perform or complete the work to be performed by him * * *

Therefore, you are suggesting the noncollusion affidavit also?

Mr. VOLPE. It would be only the general contractor that would be familiar with those circumstances, I would think, Mr. Congressman.

Mr. CRAMER. You will have no objection, then, to some clarifying language in that section making it a little more specific?

Mr. VOLPE. That is, the general contractor.

Mr. CRAMER. You would prefer the provision that it would be the general contractor.

I gathered from the testimony of the other gentlemen that he would prefer that it be both.

Mr. VOLPE. Let us say that I think it would be well for it to be clarified. The Government generally does not want that job of trying to get into that area, frankly.

Mr. CRAMER. I would also like to ask you or your counsel if you have any suggestion in reference to the question which I asked the gentleman representing the electrical contractors, as to clarification in the same subsection, in order to try to prevent the Government from having to involve itself in a review of all of these contracts under (g), and (h), so that the Government would only be involved under subsection (h), where there was a possibility of a saving to the Government, and would not have to review all these subsection (g) cases.

I make the suggestion that it might be possible, although I am just throwing it out as one alternative, that only in those instances where the subcontractor requests the Government to investigate the question

of whether the contract has been performed, should the Government inject itself.

Mr. VOLPE. In other words, if there were an appeal?

Mr. CRAMER. That would give him an appeal from the contractor's initial decision. His reply, if I remember, was that it could result in collusion between the two.

Mr. VOLPE. Not speaking for the association, but speaking personally, I believe that it should be possible for a subcontractor to be able to appeal to the agency if he feels that the general contractor's ruling in this situation was not in accordance with the facts.

Mr. CRAMER. If that section were so amended, do you see any possibility that it might result in the contractor and the subcontractor getting together to the disadvantage of the Government, and taking advantage of that provision?

Mr. VOLPE. I do not believe so, sir.

Mr. CRAMER. I have additional questions with regard to subsection (f) and also in conjunction with subsection (c). You suggested that you strike "major category," so that the general contractor can do the mechanical specialty work himself.

I asked a question of the gentleman representing the electrical contractors, as to whether, if the prime contractor wanted to do any portion or all of a particular mechanical specialty work where the subcontractor was included in the initial bid and named, he could do so under the provisions of (c), and (h). What is your opinion on that?

Mr. VOLPE. I believe he could do so.

Mr. CRAMER. Would he have to comply with subsection (h), in doing so—which is the answer that the gentleman from the electrical contractors indicated? He thought that subsection (h) would apply, and that if there were a saving he would have to reimburse the Government.

Mr. VOLPE. Let me assume that the subcontractor named by the general contractor had a price of $100,000. If we are practical about it, the fact is that if the general contractor would like to substitute his own name and do the work himself, I do not think he is going to turn around and say "I would like to do it and can do it for $10,000 cheaper and I am willing to give you $10,000." At least, there are not too many philanthropists among the general contractors. However, let me get into the record the fact that better than 99 percent of the general contractors are law-abiding citizens who are trying to do a decent job. Unfortunately, you are trying to remedy certain things which happen among a small group, and more unfortunately, this small group has gotten into a substantial portion of the Government work.

Mr. CRAMER. If subsection (h) applies as well as (c), where a contractor takes over the work of a subcontract of his own volition, he does not have to ascribe a reason for it?

Mr. VOLPE. This is after the contract has been awarded?

Mr. CRAMER. That is right.

Mr. VOLPE. The contract has been awarded on the basis of a certain sum of money, based on a listed subcontractor that he had incorporated in his bid. Your question is that, after the contract is awarded, if the general contractor for some reason decides that he would like to perform that work himself.

Speaking personally, and again not for the association, I do not believe that the general contractor should be allowed to do that.

If a general contractor feels that he can perform that work himself, he should have so indicated in the first instance, in my humble opinion, and I perhaps go a step further than Mr. Glassie did. Perhaps he would agree that if the general contractor has been accustomed to doing that work himself, he should so stipulate, and name himself in the first instance.

If he goes ahead and uses the bid of a subcontractor in the first instance, then I think you ought to stick with the subcontractor, and not substitute his own name for purposes which I think it would be rather difficult for him to explain.

I suppose if he felt that under the terms of subsection (h) he could do it perhaps he ought to be asked to contribute something, if savings were effected. I do not imagine that he would give you more than 50 cents.

Mr. CRAMER. That is my point. It opens up the whole realm of the Government having to go in and try to prove how much it costs him to do that same type of work.

Mr. VOLPE. I believe it would be impossible for the Government in any case to determine how much it was going to cost him.

Mr. CRAMER. I have just one other question.

What is your opinion with regard to the lack of provision for an enforcement section in the bill? Do you think it will result in being self-enforcing as a matter of practice?

Mr. VOLPE. Congressman, actually, this bill is going to be respected. It is going to produce results as the result of cooperation that is engendered between the various segments of the industry. If it is adopted by Congress, I do not believe that in the first months of its operation we should encumber it any further with enforcement provisions. I think that experience with it in the course of a year or two or three will definitely indicate the fact that possibly it is doing a great deal of good, and therefore should be continued, perhaps with additional teeth in it, if necessary, or perhaps the practicing contractors will decide that they want to keep Uncle Sam out of their business.

Mr. CRAMER. As I understand, you are willing to more or less leave it to the discretion of the agencies involved in administering the specific provisions after the 5-day period?

Mr. VOLPE. Yes.

Mr. CRAMER. You believe that they should have the discretion in administering it thereafter, and, as a contractor, you are satisfied with that situation?

Mr. VOLPE. Yes, sir; except for one point, sir. I would like to call attention to the fact that you have provided a 5-day period prior to the award of the contract after the award of the contract, prior to the opening of bids, during which a general contractor can substitute the name of another subcontractor without any reason whatsoever. You also stipulate only 5 days in that situation, where a general contractor uses the statement in submitting his proposal that he was unable to get a responsive bid for that particular phase of the work, namely, the heating or plumbing or what-have-you. Then the bill goes on and says that in the event a general contractor submits such a statement, that within 5 days exclusive of Saturdays, Sundays, and holidays,

after the opening of the bids, he shall notify the executive agency in writing of the name of the subcontractor he proposes to use.

I think that, if 5 days is equitable in the first instance, that 5 days is not equitable in the other. It seems to me that at least 15 days should be allowed in connection with the section which will not arise too often, but will arise on some occasions where a general contractor gets no bid at all in a particular line or perhaps gets one bid that he does not believe is a responsive bid and then, after the opening of the bids finds, as I believe he would, that it would require more than 5 days for him to procure a legitimate bid to submit.

Although it was not part of our testimony, I would like to suggest that consideration be given to making that 15 days instead of 5, sir.

Mr. LANE. Do you have further questions, Mr. Cramer?

Mr. CRAMER. No.

Mr. LANE. You feel then, Mr. Volpe, that at least the legislation will put all parties on their guard, the general contractors, subcontractors, and the Government, so that perhaps we can go along without putting in any of those stipulations.

Mr. VOLPE. I would hope so.

Mr. LANE. Are there any further questions?

Mr. FORRESTER. Is the witness of the opinion that this is going to save the taxpayers some money, too?

Mr. VOLPE. No, sir.

Mr. FORRESTER. I will ask you this: Are you of the opinion that is going to cost the taxpayers some extra money?

Mr. VOLPE. I would say that it may cost the taxpayers money. I think it will cost the agencies some money, insofar as administration is concerned. On the other hand, to be perfectly fair and honest, I woud say that perhaps in some cases it might save some money. I do not believe that that has been generally the experience in Massachusetts, but it may possibly save some money in some areas.

Mr. FORRESTER. What has been the experience in Massachusetts? Has it cost you more money to operate under a law similar to this?

Mr. VOLPE. Well, the law in Massachusetts, of course, is a much more "cumbersome" law, and I use the word for lack of a better word.

It provides for the listing of 14 or 15 subcontractors, instead of just the mechanical specialty trades, and it has rather voluminous words in connection with the substitution of bids, the various possibilities; and the savings, of course, all accrue to the owner. However, by the same token, of course, the owner also has to pay for additional money in case the substitution involves a plus instead of a minus.

In my experience the opinion generally has been that the better general contractors and the better subcontractors more and more are leaving the public work in Massachusetts alone, so that I think by and large, without any depreciation of the contractors who are doing the work in Massachusetts, that some of the better general contractors, and many of the better subcontractors, are not doing much public work in Massachusetts today.

Mr. LANE. How long has that bill been on the statute books in Massachusetts?

Mr. VOLPE. Since 1939.

Mr. LANE. It has never been repealed?

Mr. VOLPE. It has been amended almost continuously since the day it was put on the books.

Mr. LANE. Well, I believe it is the experience of all legislatures and Congress that we put laws on the statute books and amend them from time to time to take care of objections and emergencies that come up.

Mr. VOLPE. The very nature of the legislation is such that I can tell you that the agencies themselves are not too keen about operating under the law because of the many problems that it brings in its administration.

The Congressman has raised several questions of: What do you do in this case or what do you do in that case? That is exactly what some of the agencies find there. They are running to the Department of Labor frequently with questions as to what to do. They have rejections of bids many times, because of the fact that the thing became a little too complicated. Again I would say that in some areas it probably has done some good.

Mr. LANE. How long were you commissioner of public works, Mr. Volpe?

Mr. VOLPE. Just a little over 3½ years.

Mr. LANE. In that 3½ years, I presume you took care of all the situations that came up, as far as that law was concerned.

Mr. VOLPE. Fortunately for me, my department being highways and bridges primarily, although we did some of our work in connection with the beach program, the bulk of the work was highways and bridges, which did not come under the province of the law.

Mr. FORRESTER. Getting to subsection (g), I notice that in paragraph (b), the words—

shall refuse to enter into a contract in accordance with his subbid therefor, or shall fail or refuse to post a performance bond. * * *

Is that a new approach as far as the subcontractor is concerned? Has it been the custom in the past for the subcontractors to give performance bonds to the prime contractor?

Mr. VOLPE. Not in all cases, sir. As a matter of fact, I would say that in the minority of cases has that been the situation.

Some general contractors request and require performance bonds from certain subcontractors with whom they do business. If you are doing business with a reputable subcontractor that you know and are sure of, generally speaking, you do not ask for a performance bond.

On the other hand, if you are not certain of the firm, and particularly if it is the first time you are doing business with them, perhaps on some occasions you do ask for a performance bond.

Our association's invitation to bid provides in the invitation which we send to subcontractors—which is being used by some of our general contractors—that

If we are awarded the work and your bid is accepted by us, you will enter into a contract for the performance of the work at the price quoted, and if requested, will be required to furnish a bond at our expense—

meaning that the general contractor will pay for it—at the general contractor's expense.

Mr. FORRESTER. Of course, my memory plays tricks on me a lot of times, but my recollection is that the testimony last year was to the effect that almost invariably there was no performance bond given by the subcontractor—that is why I wondered if that was not a new

approach. I certainly have not had time to study this legislation because I have been out of the frying pan into the fire. I have been one of those over there opposing that civil-rights legislation, so I just stepped into this.

I would like to ask you if this legislation contemplates that the subcontractor is going to be required to give a bond?

Mr. VOLPE. I don't believe the legislation requires that the subcontractor give a bond, but it provides that the general contractor may require a bond, so that, if the general contractor desires the bond, under the terms of the bill he could require one of the subcontractor.

Mr. FORRESTER. Of course, on all those bonds that are purchased it finally ends up that the Government is the one that pays the premiums.

Mr. VOLPE. It is included in the bid of either the subcontractor or the general contractor, one of the two.

Mr. FORRESTER. Yes.

Mr. LANE. Do you have questions, Mr. Poff?

Mr. POFF. I believe the witness said a moment ago that the passage of this bill may cost the taxpayers additional money. For the purposes of the record, would you mind giving us a specific example where that may occur?

Mr. VOLPE. I think, number one, that the Government agencies could tell you that better than I. I can give you some of my experiences in Government service, but basically, as I indicated, it was in highway and bridge work, where this law did not apply.

Your other Government agencies would certainly be in a better position than I to indicate to you the additional administrative costs involved in connection with the conduct of their affairs.

Mr. POFF. May I interrupt to say at this point that my question goes to the additional expense which may result over and beyond the additional administrative expenses.

Mr. VOLPE. Mr. Congressman, you can argue both sides of this. I will say that I think the subcontractors are as sincere in their statements to you as anyone. They believe that there will be more competition as a result of this legislation being placed on the books. I think they are sincere in their statement there and it could be that some areas of the country that might apply.

By the same token, as a general contractor, I would say to you that I think that in some cases it would mean that fewer general contractors or subcontractors would bid on the work. When you have fewer general contractors and fewer subcontractors bidding on the work, normally, you know that it will affect the price.

The construction business is no different than business when you are buying a suit of clothes that you are wearing today. If there is a great deal of cloth around and a great many tailors around, the price of the suit generally is a little lower.

Mr. POFF. If you will explain why you think there may be fewer competitors, I believe it will answer my question more directly.

Before you answer, may I ask whether you are suggesting that there may be some collusion among the subcontractors?

Mr. VOLPE. I am not suggesting that at all, sir. I am only suggesting that in the everyday competition for work, the quantity of work which a contractor undertakes to perform is measured many times by, first of all, the ability of his organization to perform the work.

Secondly, it is measured by the type of price which he can get for that work. I am not suggesting that contractors overprice their work, but there are a great many risks involved in the contracting field.

Mr. FORRESTER. You are not suggesting it but you are not excluding it?

Mr. VOLPE. Not necessarily. The fact is that if a general contractor takes on additional volume of work, it generally costs him a little more money to operate, because he does not have a spare superintendent to put on that job. If he feels that there is a limited number of bidders on that job, he might bid 5 percent higher with the idea that if he gets the job he can have enough money so that he will still make a profit, without using his best superintendent. It depends on the law of supply and demand. If you reduce the number of general contractors, or subcontractors who bid upon the work, you are apt to raise the price of the work because a fellow naturally likes to get as much as he can for his work.

Mr. CRAMER. Will the gentleman yield?

Mr. POFF. Yes.

Mr. CRAMER. Let us take a situation where there is a substantial contract involved and where therefore, I think automatically the result is that there is only a limited number of subcontractors who would submit a bid to the prime contractor—is that a general experience in a large contract?

Mr. VOLPE. Generally speaking, that is correct, sir.

Mr. CRAMER. Let us say that in a given area you have 2 or 3 of those. Is it not possible that under this situation, where those subcontractors are guaranteed that they are going to get the job, that firms A, B and C might get together and say, "There is no use knocking our heads together on this thing. Let us make a little money out of it. We will get together and you bid on this one, and we will bid too, but it is understood that you get this one and we get the next one"?

Mr. VOLPE. Among unscrupulous men, that could happen. That is one of the reasons why one of our suggestions for amending the bill is that the subcontractor submitting the bid to us would submit a noncollusion statement, such as we ourselves make to the Federal agencies, when we bid.

Mr. CRAMER. There is a pretty fine line as to what is and what is not collusion. There is nothing to keep these subcontractors from operating in that fashion, is there?

Mr. VOLPE. There would not be.

Mr. CRAMER. Do you think that this legislation would tend in any degree whatsoever to encourage that type of thing?

Mr. VOLPE. There are some areas of the country where perhaps that might be the case.

Mr. CRAMER. If that were the case, would that not substantially increase the costs?

Mr. VOLPE. It could.

Mr. CRAMER. It that correct?

Mr. VOLPE. Let me hasten to assure you that we do not believe that there are any more crooks in the construction industry than in any other industry.

Mr. CRAMER. I am not suggesting that there are.

Mr. VOLPE. There are more bankruptcies in the construction industry than in any other industry you could name.

Mr. CRAMER. I would be the last to suggest that there are.

Mr. FORRESTER. Mr. Volpe, I want to ask you one question. I believe that the gentleman can answer this question, because I think he has demonstrated a fine working knowledge in this type of thing.

Mr. VOLPE. Thank you.

Mr. FORRESTER. Does this bill eliminate bid shopping, bid peddling?

Mr. VOLPE. It makes a sincere effort to do so, I believe, but the fellow who is going to shop and the fellow who is going to peddle are going to do it regardless of this bill.

Mr. FORRESTER. Has it made it any harder on him?

Mr. VOLPE. It makes it a little harder, yes. It makes it harder for him to do it.

Mr. FORRESTER. Does it make it just a little bit harder?

Mr. VOLPE. Well, that is a matter of degree. There is no penalty really on the subcontractor. We are discussing this in a very friendly and informal manner. Actually it takes two people to become party to the type of situation we are talking about. If all of those in the general contracting industry and all of those in the subcontracting industry would refuse to accept in the first instance, even a telephone call from a contractor who offers to cut his bid, you would not have any need for this legislation.

Mr. FORRESTER. Suppose that a subcontractor had agreed to do the work for $100,000. Suppose that he comes in with a substitute who says that he will do it for $100,000, but that in a sub rosa sort of way he has told this man, "I will do it for $70,000, but I will go ahead and accept this contract. The $70,000 figure is between you and me."

Mr. VOLPE. Let me assure you that there is not a $30,000 markup on a $100,000 job.

Mr. FORRESTER. I am basing this on the evidence that we had last year, getting back to the Florida affair, where the witness testified that a subcontractor in Sarasota wanted over twice as much for a contract similar to one done at De Land. The bids were twice as much in the Sarasota area. Has that situation changed since last year, or might that happen again?

Mr. VOLPE. That is a situation that I believe Mr. Rooney called to your attention.

All of us in the general contracting field, from time to time have had experiences which are peculiar to our particular area. It is possible for it to happen and sometimes general contractors are burned and subcontractors are burned. Sometimes you may think that the subcontractor in that area is trying to give you the business, when actually that subcontractor has worked in that area and knows the conditions under which he must work, and has properly figured his job.

The subcontractor comes in from 100 miles away and does not know some of the conditions, and he says "Sure, I can do that job for you for $40,000."

The local boys may have bid $50,000. He may find out before he is through that $50,000 was the right price. You cannot always be certain that that situation will apply. I have had the experience on a few jobs similar to that which Mr. Rooney pointed out to you.

Mr. FORRESTER. Considering that evidence, the gentleman can see that I did not make a ridiculous comparison when I said that $100,000 could be reduced to $70,000, because in the case referred to in the testimony of Mr. Rooney, the price had increased over 100 percent.

Mr. VOLPE. Yes. In that type of situation that is possible.

Mr. CRAMER. May I ask one more question?

Mr. LANE. Mr. Cramer.

Mr. CRAMER. I pose to you the same question that I posed to the representative of the electrical contractors. What if a contractor makes a low bid which to all intents and purposes would be acceptable, and within the 5-day period he discovers that his bid is substantially lower than others because he made a mistake.

What is to keep them from not complying with the 5-day requirement of naming the subcontractors, and thereby getting out of the obligation?

Mr. VOLPE. Actually he can get out of a job much more simply than by refusing to name his subcontractors. It is not too well accepted by many general contractors, but there are cases where Government agencies are allowing a general contractor who pleads an honest error, to be relieved of the responsibility of performing the project.

I am talking now of an honest error, where somebody adds up a column as 733 instead of 933. I am not indicating the type of error where a contractor thought that he can do the masonry work for $150,000 and takes a second look and finds that he ought to have $250,000.

It is not on the basis of mistaken judgment but rather on mechanical errors.

If there were no error, I think the Government agency could force the contractor to comply with the statute and the bidding conditions. After all, this law will come a part of every specification and contract document that the Government agencies use in the performance of their building construction, and, as such, it will be just as much a part of the requirement that the general contractor must perform, as any other phase of the contract.

I would plead that, if he fails to comply with the stipulations, the owner has recourse in various ways, to make him comply. They can have him forfeit his bid bond or make him comply in other ways.

Mr. CRAMER. In other words, if the contract is let to the contractor 3 days after the bids are opened, and in 2 days thereafter he does not submit the names of the subcontractors, he is subject to breach of contract.

Mr. VOLPE. You are assuming that he had not named the subcontractors in the first instance, that he left the spaces blank.

Mr. CRAMER. He signed the affidavit which was provided.

Mr. VOLPE. He signed the affidavit for all of the heating or plumbing or electrical work.

Mr. CRAMER. Or for any portion of it.

Mr. VOLPE. Or any portion of it. I would say that if he failed within that 5-day period to name his subcontractors, as required, it would be a breach of the contract.

Mr. CRAMER. Let us assume that, under the administrative discretion, that we just discussed, that the agency should decide, "This is a technical thing, about naming subcontractors, I am confident he is going to do it. I will go ahead and award him the contract."

Then subsequently he does not name the subcontractors.

Mr. VOLPE. I would say that generally speaking the Government agency would not award him the contract until such time as they had the list, as required. I do not believe that as a Government official I would award the contract until I had that information.

Mr. CRAMER. I was trying to limit the range of the administrative discretion.

Mr. VOLPE. That is why I believe that the 15-day period there would give the contractor the chance to do it more equitably.

Generally speaking, the agencies do not award their contracts, except in rare instances, within the 15-day period, so that there would be no hardship on the agency to await the 15 days if you did change the 5 days to 15 days. It takes at least 2 weeks to canvass the bids and list them and come up with the necessary recommendations from the lower echelon to the top official of the agency involved, or whichever official it is that has jurisdiction over the award of the contract.

Mr. BRICKFIELD. Would you give some reasons why a prime contractor would substitute a subcontractor under subsection (h)? What would be some of the reasons under subsection (h) on page 5, why a prime contractor would move to substitute a subcontractor?

Mr. VOLPE. Well, I would say this is a situation where the general contractor submitted the name of a subcontractor in his proposal form, within this 5 days, did not change it, is subsequently awarded the contract, and the provision is made here that if the general contractor desires to make that change after the award of the contract, he may do so. He must notify the agency and apparently it provides that there should be an adjustment of price.

Mr. BRICKFIELD. What would be some of the reasons why they would wish to substitute under subsection (h)?

Mr. VOLPE. Well, there are probably 2 or 3 reasons that I might mention.

No. 1, in the first instance he had only 5 days in which to properly evaluate the bid and so forth.

Let us assume for a moment that the subcontractor he had named and had not changed within the 5-day period had looked all right on the basis of a preliminary investigation, and he felt he would be capable of doing the job. However, after a further look-see, he goes to the site of the job and starts to inquire, and finds that maybe his subcontractor is not qualified.

Mr. POFF. That would come under subparagraph (g).

Mr. BRICKFIELD. He would be under (g) on that, if he feels that he is not qualified.

Mr. VOLPE. It all depends on what you mean by "qualified." You cannot compare subcontractors like you can one dozen eggs here and one dozen there.

A subcontractor which general contractor A thinks is qualified might not be qualified in the opinion of general contractor B.

Mr. BRICKFIELD. In this instance it is the prime contractor making the decision.

Mr. VOLPE. That is correct. He may find when he gets down there that although the fellow probably can complete the job, he has been known to work a very slow job, and that in the final analysis the general contractor probably will find that it will cost him more money

to do the job than it would if he substituted another subcontractor who was, let us say, $2,000 higher.

That might be one reason why he might want to substitute.

Then, of course, he may not have checked the labor policy of that particular subcontractor and may find that his labor policy is such that it would not be conducive to present labor relations on the project, and therefore, for that reason, he might want to substitute.

Mr. BRICKFIELD. What would prevent the prime contractor from simply notifying the Government that he deems the subcontractor not qualified under subsection (g), regardless of the reason, be it a labor reason or a capricious reason? What is to prevent him from moving on to subsection (g) in which event the Government would be foreclosed from recovering any adjustment in the price?

Mr. VOLPE. Under (g) he would not be disqualified by the contractor. It says:

*** * * if such contractor shall be disqualified or be determined to be unqualified to perform such work by or under any applicable Federal statute * * ***

The Davis-Bacon Act would be an example of that situation.

Mr. BRICKFIELD. Is it your understanding that this disqualification, or being unqualified relates only to meeting governmental requirements?

Mr. VOLPE. Under (g); yes.

Mr. LANE. Thank you, Commissioner, very much. I asked you to come back for a few minutes. We have kept you 1 hour and 10 minutes now. I hope that you will be able to get the next plane. If you are delayed for your speaking engagement tonight, I guess you will have to blame our subcommittee.

Mr. VOLPE. Thank you, sir.

Mr. LANE. Mr. Commissioner, I want to say for the record that your testimony has been very, very helpful to this committee. You are well qualified to submit your ideas on this legislation and we are happy to have them.

Mr. VOLPE. Thank you very much. It was nice to be with you gentlemen.

Mr. LANE. Mr. Williams, your statement was put in the record today because we were fearful that you would not get here. If you wish to testify now you will have that privilege.

TESTIMONY OF FRED WILLIAMS, CHAIRMAN, LEGISLATIVE COMMITTEE, MECHANICAL CONTRACTORS ASSOCIATION OF AMERICA

Mr. WILLIAMS. Yes, Mr. Chairman and gentlemen of the committee, I would like to testify.

Mr. LANE. Give your full name to the reporter.

Mr. WILLIAMS. My name is Fred Williams, president and treasurer of Fred Williams, Inc., Boston, Mass.

I am also chairman of the legislative committee of the Mechanical Contractors Association of America, on whose behalf I submit this statement. This association is an organization of approximately 1,200 contractors throughout the country. There are 40 affiliated local associations, some of which are state associations such as the New York, North Carolina, and Wisconsin associations. Others are metropolitan associations such as the Boston, Chicago, and San Francisco

associations. Our members perform heating, piping, and air conditioning work in an amount approximated over $1½ billion a year.

My own State of Massachusetts has for several years had in effect a statute applicable to State construction which provides a somewhat similar procedure to the Federal Construction Contract Procedures Act but is more complex. It accomplishes the same purposes that will be accomplished by the legislation pending before your committee, namely, to materially reduce the unfair trade practice of bid shopping, thereby providing better construction for fewer dollars.

During the hearings before your subcommittee on S. 1644 in the 84th Congress the Commission of Labor and Industry for my State, the person charged with the administration and enforcement of this law, certified for the record:

> * * * I can say without reservation that our Massachusetts law has worked to the advantage of the State and its political subdivisions, of contractors and subcontractors, and labor, in stabilizing costs, creating a higher quality of workmanship, and greatly improved contractual relations during the construction of the building projects. * * *

The State of Idaho also has a provision governing the award of State construction contracts which requires a general contractor to list his principal subcontractors. Again, during the hearings before your subcommittee on S. 1644, Mr. Claude Detweiler, of Twin Falls, Idaho, a member of the National Electrical Contractors Association, the National Association of Plumbing Contractors, the Mechanical Contractors Association of America, and also of the Associated General Contractors of America, Inc., submitted a statement for the record that the State law of Idaho is operating effectively and satisfactorily (hearings before House Judiciary Subcommittee No. 2 on S. 1644, Serial No. 18, p. 75).

The State of Wisconsin has for several years now had a state law requiring the prime contractors on State and municipal public works to list the subcontractors which they wish to use. Mr. E. H. Herzberg, secretary-manager of the Milwaukee Electrical Contractors Association, stated to you gentlemen last year that the Wisconsin law has operated in the public interest (hearings before House Judiciary Subcommittee No. 2 on S. 1644, Serial No. 18, p. 35).

I am convinced as a result of my experience under the similar Massachusetts statute that the legislation before you is in the public interest. It should enable the Federal Government to realize substantial money savings yearly on its construction. It should better insure the general contractor of an adequate number of competitive subbids, submitted by the best qualified subcontractors, and received in sufficient time before closing to enable him properly to evaluate them and estimate his costs on a businesslike basis. It should insure the specialty contractor that his bid will not be misused and thus encourage a wider circle of competition among these independent small-business men with more of them having an opportunity to share in Federal construction.

A possible Achilles heel is the 5-day period during which a general contractor may change subcontractors simply by notifying the Government in writing. Hence, the committee may wish to study the factual record reflecting whether this provisions has been abused after the law has been in effect for a reasonable period of time.

For myself and on behalf of the Mechanical Contractors Association of America, your early and favorable action is urged.

Mr. LANE. Thank you, Mr. Williams.

Are there any questions? If not, then we will move on to the next witness and I thank you, Mr. Williams, for coming down here and testifying before the committee today.

Mr. WILLIAMS. Thank you, sir.

Mr. LANE. The Division of Property Management of the Department of the Interior is represented here by Mr. D. H. Miller.

TESTIMONY OF DONALD H. MILLER, ASSISTANT DIRECTOR, DIVISION OF PROPERTY MANAGEMENT, DEPARTMENT OF THE INTERIOR

Mr. MILLER. Thank you, Mr. Chairman. I did not bring a prepared statement with me, Mr. Chairman.

Mr. LANE. First, will you give your full name and title.

Mr. MILLER. My name is Donald H. Miller. I am Assistant Director, Division of Property Management, Department of the Interior.

I did not bring a prepared statement. I came in response to the request of this committee because of the fact that we have not yet furnished you gentlemen with the Secretary's official comments with respect to this bill.

Mr. LANE. Would you care to submit it later on?

Mr. MILLER. Yes, sir. It is probably on the way to you now, sir. I am just in advance of the mail.

Mr. LANE. Thank you.

(The statement referred to will be found on p. 90.)

Mr. MILLER. I would like to say that that comment reiterates the objections expressed to S. 1644, the last similar bill with which we dealt, on the basis that the administrative costs of the Department of the Interior, because of its low volume of the type of contract which will be affected by this bill would probably be disproportionate to the objectives sought by the bill.

Mr. LANE. Are there any further questions?

We may expect your statement in a day or two?

Mr. MILLER. Yes, sir.

Mr. LANE. Mr. Poff?

Mr. POFF. Mr. Miller, I will ask if you think the passage of this bill might increase the costs to the Federal taxpayer?

Mr. MILLER. Sir, I can only give you a personal opinion, not an official opinion on that. In my experience, which includes several years as a contracting officer, at which time I was in Alaska, I would say that in Alaska where I was operating and where there are few contractors and perhaps fewer subcontractors, it would be my own personal opinion that it would increase the costs to the Government and, I believe that a similar statement might be made in any area where the number of prime contractors and the number of mechanical specialty subcontractors is limited and we did not get the type of competition we would like to get in expending government bids.

Mr. POFF. Will you explain what part of this bill might in such a case further restrict competition?

Mr. MILLER. Yes, sir. In connection with our work where our projects extend over a 3 or 4 year period of seasonal operation with a very short season in the west in the northwest and in Alaska, it would

require the making of the subcontracts in advance of the time when the work would have to be done which would mean provision in those subcontracts and in the prime contract for amounts that would cover all possible contingencies up to the time when the work would have to be done.

Mr. LANE. Mr. Forrester?

Mr. FORRESTER. Do I glean from your statement that the Department of the Interior does not have too much contracting in this line?

Mr. MILLER. I would say that we do far less than the Department of Defense, the Atomic Energy Commission or the General Services Administration which to my best knowledge do some 80 percent of the Government contracting of this type.

Mr. FORRESTER. That is all.

Mr. LANE. Mr. Cramer?

Mr. CRAMER. What percentage of that work that you just described is done by the single contract system?

Mr. MILLER. Predominantly all of our construction work is done under the general contracting system.

Mr. CRAMER. Would you say, along the lines of other questions that I have asked, that subsection (g) should be clarified and if so, do you have any suggestions as to clarification that should take place in determining or setting out in the act in what instances the Government will be required to review the contract under subsection (g)?

Mr. MILLER. In our previous analysis of a subsection nearly identical, if not identical, with this, Mr. Congressman, we believed that it would require administrative work by the Government contracting office backed up by a legal force which we just do not have in the field and which would throw a load of work into Washington at a point where it would be done at long-range and create additional confusion rather than to help the picture.

Mr. CRAMER. Do you have any suggestion as to how that could be obviated and still accomplish the general purpose of the act?

Mr. MILLER. No, sir. I have none to offer.

Mr. CRAMER. Do you think that a requirement that only in those instances where the subcontractor objects to having been declared unable or unwilling to perform his contract the Government reviews the contract, would assist in this situation?

Mr. MILLER. That would throw the Government contracting agent into the picture without any doubt. That is the point at which we had our main reservation to this particular procedure.

Mr. CRAMER. As I understand your testimony, you believe he is in it anyway under subsection (g), do you not?

Mr. MILLER. Yes, sir.

Mr. CRAMER. This would be a limitation as to the number of contracts he would have to review.

Mr. MILLER. Well, for the most part, our contracting offices are large enough to be fully capable as contracting offices.

Under normal circumstances we are not fortified with legal counsel at all of those places which would mean that the legal problems involved and particularly the interpretation of a given set of conditions to determine whether or not this clause or this provision would be applied would throw the work at long range or require an attorney on that spot which would be another instance of additional administrative work. As I said earlier, the few contracts in relation to the larger

contracting agencies that would be affected in the Interior Department would throw a disproportionate load of administrative expense on us since we would have to be backed up by essentially the same units of staff back of the contracting officers as would be necesary in larger contracting agencies.

Mr. CRAMER. Have you made an effort to estimate what that additional cost might be so far as your Department is concerned?

Mr. MILLER. No, sir, we did not go that far in expressing our comments on the bill.

Mr. LANE. Would it be very hard, or would it not?

Mr. MILLER. It would be very difficult. Only experience can determine with any reasonable accuracy what that cost would be.

Mr. LANE. You would have to wait until the law was on the statute books and try it out for a year or two.

Mr. MILLER. That is right, yes, sir.

Mr. POFF. Do I understand that you think that this bill will add more additional expense than the bill last year?

Mr. MILLER. No, sir, I think it will add an equal amount to our Department. I would not be able to say whether it will be more or less. I do not think that it would add quite as much, perhaps, because of certain exclusions in this bill that were not in last year's bill. That is a matter of degree also.

Mr. BRICKFIELD. Does the Department of the Interior have any regulation now by which the Department may require the submission of the subcontractors' names prior to the awarding of the contract if it so desires?

Mr. MILLER. We have no written regulation to that effect, sir. However, a great many of our contracting agencies do require it in the invitation to bid, but it is not formally covered by an existing regulation.

Mr. BRICKFIELD. In other words, many of the agencies have regulations which are similar to the provisions of this bill insofar as requiring the names of subcontractors at the time of submission of the prime bid.

Mr. MILLER. Or before award of the contract.

Mr. BRICKFIELD. Do you know if that is true insofar as the Department of Defense is concerned?

Mr. MILLER. No, sir. I could not answer that.

Mr. LANE. Are there any questions?

Thank you, Mr. Miller, for patiently waiting here all day. We appreciate your evidence.

Mr. MILLER. Thank you for giving us a chance to appear, Mr. Chairman.

Mr. LANE. I notice we have no other witnesses now on the agenda here. Is there anybody in the room who wishes to speak either in favor of or against this proposed legislation?

Mr. GLASSIE. Mr. Chairman, may I say just a few words?

FURTHER TESTIMONY OF HENRY H. GLASSIE, COUNSEL, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

Mr. LANE. Will you give your full name, Mr. Glassie, and whom you are representing?

Mr. GLASSIE. Henry H. Glassie, counsel for the National Electrical Contractors Association and trustee of the Council of Mechanical Specialty Contracting Industries.

Mr. Volpe of the Associated General Contractors has submitted a statement including nine suggested amendments. While we were familiar with some of these ahead of time, we only saw them this morning.

Mr. LANE. I know that we are taking you offguard here also on the Secretary of the Army's statement.

Mr. GLASSIE. I had only seen that for 2 or 3 minutes ahead of time.

I can say offhand that we would have no objection to amendments 1 through 4 and amendment No. 7 suggested by the Associated General Contractors. On principle, at least, we could go along with Nos. 5 and 9, although we would have to study the language a little more thoroughly.

Mr. LANE. How about No. 6, raising the figure from $100,000 to $200,000?

Mr. GLASSIE. Well, it is difficult to draw an exact line as to what that limit should be, but we feel that $100,000 is plenty high and that $200,000 would be too exclusive and eliminate a number of small contracts in which thousands of contractors who do not get into very large jobs are nevertheless keenly interested. I am not prepared to say that $100,000 is the perfect figure. It might be $105,000 or $110,000 or some other figure, but we feel that $200,000 is too high.

Mr. FORRESTER. But you did mean that there is a class of subcontractors that can only participate in those small contracts.

Mr. GLASSIE. Yes, sir. We feel it practical to eliminate the job of a size where the machinery would not be worth while. We support the figure of $100,000, but what the perfect figure is we are not prepared to say. We feel that is much more reasonable than the figure of $200,000.

Mr. LANE. Mr. Volpe agreed with you. He said he did not know what the figure should be. It could be $200,000 or $300,000.

Mr. GLASSIE. We may both be picking a figure out of a hat, but we have a strong feeling that $200,000 is too high. No. 8, which asks that bridges and tunnels be stricken, we do not feel is appropriate. Actually, the Federal Government is not contracting for any bridges and tunnels. It might be doing so in the District of Columbia, but we feel that the method of contracting and the method of subcontracting for bridges and particularly tunnels, where the electrical work is a very large part of the job, is not dissimilar or different from buildings, and it would be appropriate to include them. I think it is a small detail for the practical fact that the Federal Government is not the contracting agency for bridges and tunnels except in the most rare instances.

Mr. POFF. May I interrupt to say that the Government is interested in bridges and tunnels in the national land owned by the National Park Service, in the Blue Ridge Parkway and the Skyline Drive, and things of that nature.

Mr. GLASSIE. I did not say there were none. I say there are very few.

Mr. FORRESTER. Mr. Glassie, another thing about bridges and highways is that it is true that the States do make the contracts, but there

are some Federal laws which are binding on the States such as wages and hours that come in there so that we are really legislating now only highways and bridges.

Mr. GLASSIE. Mr. Forrester, there are Federal statutes that purport to apply to contracts let by other governmental authorities, such as some of the labor laws, but this bill purports to affect and affects only direct Federal contracts.

Mr. FORRESTER. How about the Interstate Highway System?

Mr. GLASSIE. It would not affect that, as I understand.

Mr. FORRESTER. Of course, you know that they have the wages and hours law there.

Mr. GLASSIE. They do, but I am saying that this particular bill does not attempt to regulate the contracting procedures of any agency but the Federal Government. It is not connected with Federal funds or loans or grants or anything; only Federal contracts.

Mr. CRAMER. May I ask one question?

Mr. LANE. Mr. Cramer.

Mr. CRAMER. Do you see any difficulty, as suggested by Mr. Volpe, in these instances where it is a Federal road or bridge or what have you, of separating the bridge from the rest of the highway construction and making it applicable to this law and the rest of the highway construction not applicable, such as the Skyline Drive and so forth, and these highways out here near the Pentagon and this highway from here to Baltimore, too, which is a Federal highway?

Mr. GLASSIE. I think it might be appropriate to exclude bridges that are part of a highway project.

Mr. CRAMER. It is hard to have any that are not, is it not?

Mr. GLASSIE. There are some separate projects. I was thinking of bridges over the Potomac, or tunnels.

Mr. CRAMER. You would not object to an amendment that would clarify the fact?

Mr. GLASSIE. Actually, I can assure you that this is a very small issue, as far as we are concerned.

Mr. CRAMER. So far as you are concerned, it is no real issue?

Mr. LANE. Have you anything further, Mr. Glassie?

Mr. GLASSIE. This morning, in commenting on a suggestion of the Department of Defense, I think possibly I misunderstood it, which is a proviso they wanted to add to section 2 (b). Rereading it, and seeing that it is applicable only to the immediately preceding proviso, we would see no objection to it.

Mr. BRICKFIELD. Is that the proviso that permits the Government, where the prime contractor has not conformed to all of the requirements, to go ahead and let the contract anyway?

Mr. GLASSIE. Where the contractor has submitted an affidavit instead of listing, and then refuses to name within the 5 days, giving the Government the option of holding or not holding, we would see no objection to that.

Mr. FORRESTER. What about that 15-day suggestion made by Mr. Volpe?

Mr. GLASSIE. I don't know that I am prepared to say. We discussed that at great length in the industry, including the general contractors, and felt that 5 days was adequate, and I believe Mr. Volpe is putting this forward as his own personal idea, that that particular period should be extended to 15 days.

We feel that we really should have the subcontractors ahead of time, and 5 days additional after the bid opening is adequate, in any case.

In connection with Congressman Cramer's suggestion that there be a clarification of 2 (g), I would like to point out that, if the Government wishes a restriction in the cases, it should look into the matter; we certainly won't have any objection to it.

I think that should be something that the agencies feel is to their benefit, because they are restricting the right of the Government to collect money.

I would like to also point out that this question of collusion has been interjected. We don't feel this bill would have any effect on the possibility of collusion between contractors or subcontractors. We don't think it is a connected subject. Possibilities are pretty well eliminated now by the fact that subcontractors are operating in a very large geographic area, as well as general contractors, especially on Federal works. Contractors might be a thousand miles from the place of the job. They are not necessarily local people. If is a big job people are interested in, they are billing from all over the country, subcontractors as well as prime contractors.

Mr. LANE. Anything else, Mr. Glassie?

Mr. GLASSIE. In connection with the statement of the Department of the Interior, I would like to point out that virtually all the projects that the Department of the Interior engages in are expressly excluded from this bill. It excludes aqueducts, reservoirs, dams, irrigation and regional water supply projects, flood-control projects, water power development projects, jetties, and breakwaters, and so forth.

In other words, the type of project that the Interior Department representative explained where they let a contract, but the subcontract work may be done a long time in the future, such as a flood control project, such subcontract work might be 2 or 3 years after. For that very reason they are excluded from this bill.

Mr. LANE. Is that the end of your statement?

Mr. GLASSIE. Yes, sir. We would like permission if we may, to submit a written comment on the suggested amendment of the Associated General Contractors. Offhand, I think we can go along with almost all of them, but we would like to have a day to submit a detailed specific statement, or any other amendments anyone else suggests we would like to comment on.

Mr. LANE. Will you, when you submit those amendments or that statement, make enough copies for the full subcomittee?

Mr. GLASSIE. Yes, Mr. Chairman. I certainly shall, and will the day after tomorrow be adequate time—Friday?

Mr. LANE. Yes, that will be fine.

Mr. CRAMER. I would like to ask a question here.

Mr. LANE. All right.

Mr. CRAMER. You commented on my suggestion with regard to (g), and the reason I am interested in it is because I hope to cut down some of the paper work. You brushed it aside with the suggestion that the agency would probably exercise its discretion and not investigate or not take any interest in it whatsoever as it in its discretion decides, but isn't the act pretty clear as to those instances where it is obligated to investigate under subsection (h) in order to comply with (h)? Won't they have to investigate every instance in (g) to determine whether there is going to be a saving to the Government?

Mr. GLASSIE. If it was a situation in which if (h) were applicable there would be substantial savings to the Government. Then it would probably be obligated to investigate under (g) to see if (h) were applicable. If there would be no saving there wouldn't be any need to investigate.

Mr. CRAMER. They would have to look to see if there was any finding.

Mr. GLASSIE. If there is no difference in cost, there is no use in investigating whether or not there was a failure or refusal to perform by the subcontractor. In other words, the Government's only interest in that is whether the Government is going to get any money out of it.

Mr. CRAMER. It still would be a substantial number of cases, don't you imagine?

Mr. GLASSIE. I should think percentagewise it would be very seldom. I think the saving to the Government comes in establishing a system which increases the competition for subcontracts and it doesn't come under subsection 2 (h). I mean under subsection 2 (h) there will be a saving to the Government, but we feel that is the tail of the dog. The real saving to the Government is a system which encourages competition.

Mr. CRAMER. Subsection (h) is what apparently would require so much administrative procedure. It is a case of the tail wagging the dog, as I see it.

Mr. GLASSIE. It is the fact that (h) exists that makes the contractor get his low price in the beginning. If he doesn't get his low price before he submits his bid, then any reduction he subsequently gets will be taken by the Government. It is that hanging over his head that forces him to get all the sub bids in the beginning and get his right price and submit it on that basis.

In other words, it is the fact that 2 (h) exists that will save the money, but it won't come under the operation of the (h), the way we believe it will work.

Mr. CRAMER. Thank you.

Mr. LANE. Is that all, Mr. Cramer?

Mr. CRAMER. Yes, sir.

Mr. FORRESTER. Mr. Chairman, do we have another witness?

Mr. LANE. Yes. Mr. William E. Dunn. Do you wish to make another statement?

TESTIMONY OF WILLIAM E. DUNN, ASSISTANT EXECUTIVE DIRECTOR, THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC., WASHINGTON, D. C.

Mr. DUNN. Thank you.

Mr. LANE. Mr. Dunn is assistant executive director of the Associated General Contractors of America, Inc.

Mr. DUNN. Mr. Chairman and gentlemen, I wanted to clear up a point that was raised by Mr. Glassie's statement regarding the 15-day period that Mr. Volpe suggested, or recommended, in the event the general contractor was unable to obtain submechanical bids covered by section 2 (b).

I wanted to clear up the record that Mr. Volpe was speaking the opinion and recommendation of the Associate General Contractors of

America, not necessarily his own opinion on that point. If he said it was his own opinion, we adopt it.

I would like to clarify that statement further, that as to the 5 days, as appears in that section, where the general contractor has filed an affidavit that he was unable to get a responsive bid, he then under this section as now proposed has 5 days to find himself a satisfactory mechanical subcontractor and name him.

As Mr. Volpe points out, it is sometimes impossible to do that. If he couldn't get a qualified mechanical contractor that he would name prior to the submission of his bid, he might not be able to do it in 5 days, but that is not a reasonable length of time, and we just want to make clear we adopt his statement. The 5 days originated with the proponents of this bill on that particular point. There was no discussion of it as to this particular section.

However, we realize that that is a reasonable interpretation. We would like to have you give favorable consideration to Mr. Volpe's consideration.

Mr. CRAMER. Where are we dealing with 15 instead of 5 days?

Mr. DUNN. On page 3 in line 15.

Mr. CRAMER. Five days appeared twice, then.

Mr. LANE. Thank you very much, Mr. Dunn.

Mr. FORRESTER. Mr. Dunn, do you as counsel for the Associated General Contractors of America endorse this bill subject to the amendments that have been suggested?

Mr. DUNN. Mr. Forrester, I am not the counsel for the association. I am a member of the staff, but I would like to answer your question that the association's resolution, which is only a week old, covers the subject in that it states: That as a means of improving our relationships which have deteriorated in the years past the Associated General Contractors does not offer any objection to this proposed bill.

Mr. FORRESTER. The reason why I am asking that question is—I am sitting in judgment here as I was last year—the associated contractors objected to the legislation last year so I am trying to find out now what are the sentiments of the association regarding this proposed legislation. In other words, do you endorse this or not, with the suggested amendments that you have there?

Mr. DUNN. I cannot give you a yes or no answer to it. I will tell you that right off, because the statement given by Mr. Volpe is clear that we do not believe legislation is the cure to problems within the industry. However, he points out on page 2 of his statement that as a step toward that relationship, we need to get to the root of the evil of the trouble that we have and we are not opposing this legislation.

Mr. FORRESTER. I understand. You say there has been some deterioration of relations?

Mr. DUNN. That is right.

Mr. FORRESTER. There is something else I want to know. What I want to know now is whether or not if this legislation is subject to the same infirmity that you gentlemen contended that it was subject to last year? In other words, is this legislation going to cost taxpayers more money, or is it going to save money? What is your contention in that respect?

Mr. DUNN. I would like to answer the first part first.

Many of the serious objections to S. 1644 have been understood and corrected by the proponents of the authors of the bill under consideration, which are points that we have mentioned in here, particularly the preamble. It was at least the attitude of our leadership that this previous bill, S. 1644, was aimed directly at the general contractor single contract system, and there were a number of other things in there that were not workable or not equitable. The leadership of the mechanical specialty contractors has considered those objections point by point and endeavored sincerely to meet them. Certainly it is not the particular type of legislation that we would offer if we wanted legislation. It was the suggestion of our organization that this difficulty be developed and worked out without legislation and within the framework of existing laws, but as pointed out by counsel for the mechanical contractors, existing laws do not permit the degree of cooperation to police, may I say, or a code of ethical conduct.

We realize there are objections. We have suggested operating within the framework of the Federal Trade Commission and their rules and regulations or within an advisory body of the procurement officers of various offices of Defense and the General Services Administration to try to let them find a solution.

Mr. FORRESTER. I don't think the real issue here is whether you have had an agreement or not. I think the issue still remaining in this legislation is whether it is going to be costly to the taxpayers of the United States, or whether it is going to save money, and whether this legislation is subject to the objection made last year, whether properly so or not, to the effect that this legislation was administratively impossible.

Those, as I understand it, were the objections that were posed last year, and I want to know what happened to overcome those objections.

Mr. DUNN. A number of changes, Mr. Congressman, have been made which have made it considerably different from the bill that was before the Congress.

Mr. FORRESTER. I don't care to take up your time on that. I just want to know what is your opinion now. Is it going to cost taxpayers money in the shape it is, or is it going to save money, or what?

Mr. DUNN. I cannot presume to improve upon the answer of Mr. Volpe, which was to the effect that in administration certainly if this bill became a law it would add to administrative costs. He is speaking as a public administrator and as a contractor.

I think the Government agencies are the best qualified to determine that, sir. It is a matter of opinion. It is a matter of conjecture as to what it might do. If, on the other hand, we have a greater degree of competition and participation, as the proponents state, that may offset that. As one of the Congressmen has stated here, he was not interested in the administrative costs, but what about the degree of competition and the prices.

Mr. FORRESTER. Another thing that I was interested in—and this is not an issue between the subcontractors and the general contractors, but this is a matter the public, I think, would be highly interested in—the one on the subject of costs, and the second one, on the one raised by Federal contracting agencies last year that this legislation was administratively impossible, that they just simply could not live under it.

How about the changes in this new bill, and what is the gentleman's opinion now as to whether those contracting agencies can operate under this legislation as it has been submitted?

Mr. DUNN. I believe they will have to express their own opinion as to whether they can live under it or not, but I believe also that many of the objections that were in S. 1644 with regard to the administration of that bill have been removed. I cite one which has to do with the approval necessary on the part of a contracting agency before the general contractor could substitute a named mechanical contractor even though that mechanical contractor had been blacklisted by the Government, had a record of impossible performance, and all those reasons which are not necessary to be approved by the Government agencies today. Those are some of the reasons we pointed out to the proponents of S. 1644 and stated, "Here is why S. 1644 cannot be administered," and that has been corrected.

I would think at least on those points where approval of the Government was necessary under S. 1644, it is not necessary today. I would like to develop that point as to whether paragraph (g) of section 2 requires approval of a Government agency.

As I read it, sir, it does not require the approval of the Government agency under (g). The only operation of the Government is with regard to the operation of a Federal law where a subcontractor is disqualified or unqualified to perform the work. All other matters are within the control and purview of the decision of the general contractor. He does make a record of his naming of the subcontractor. There is a record of the substitution thereof. What his reasons are for the change are not subject to the approval of the Federal Government. If they were, it would be impossible to administer, and as the gentleman from the Interior Department has said, you would have to have a battery of lawyers standing behind every contracting officer.

Mr. FORRESTER. The gentleman is correct when he says that we will hear of course from the contracting officers, from the various departments and they will be given their day in court to set up any objections they might have. However, I seem to recall that you gentlemen joined in with them last year and you were in unison with those various contracting agencies.

Of course I wanted to hear from them then, but you raised that point and what I was trying to do was to see whether you had them cleared up or whether the objections that the Associated Contractors raised are cleared up to your satisfaction or not.

Mr. DUNN. As far as the drafting of this bill is concerned, it appears to be a sincere attempt to meet every imaginable objection of our leadership. Our president, Mr. Rooney, sat in with presidents of the various other organizations. We did not write the bill. There are some things that are still objectionable, but they are not basic principles. However, we think that our suggested changes, and there are nine of them, ought to be adopted to make it even more practical, and that would cut down the administrative cost.

We think that on a $200,000 contract, anything under that is unnecessary cost, and I am not particularly interested, sir, in the relationship of the general and the subcontractor or whether it has deteriorated as a basis for this bill.

Mr. FORRESTER. I appreciate that approach I think that is the correct approach.

Mr. DUNN. It is what is good for the public.

Mr. FORRESTER. That is right.

Mr. DUNN. And what is good for the taxpayers, but what is good for the public might be included also in this $200,000 figure.

Is it necessary to go through the additional cost, we will say, for a $200,000 contract, to process this? Is it savings commensurate with this additional cost? The same way with a bridge or a tunnel. How many do you have? It was stated here clearly that they were rare and unusual. Yet the same contracting agency would have to set up in that department the same procedures for this as the General Services Administration would for a hospital. That is why we think these things have to be cleared up and I think they will be cleared up. With the same attitude of openmindedness and constructive approach carried through, I believe they will.

Mr. FORRESTER. Maybe the gentleman knows that I opposed that legislation last year.

Mr. DUNN. For that we thank you as a citizen and we think you did a public services.

Mr. FORRESTER. However, I do want to say to the gentleman that I did not oppose it on any theory of partisanship or anything of the kind. What I opposed it on was based on the evidence by every contracting agency of the Government that that legislation was unworkable and also based upon the contentions of every contracting agency, in which I think you gentlemen joined, that it was going to be highly expensive to the taxpayer.

I thought I was right then and if I had cast a vote with that kind of evidence before me my vote would certainly be the same.

I haven't changed one particle in trying to defend the taxpayers and trying to make the thing workable on the part of our military, but it would be helpful indeed to me now if I find that you gentlemen have receded from your position. You think now that this legislation is workable or with these amendments can be made workable?

Mr. DUNN. We think it can be made workable and we think if the contracting agencies show that it is not workable and that it would cost taxpayers money and it is not in the public interest, we would certainly expect you and every Member of Congress to oppose it, as we would oppose it.

We have not seen the opinion of the contracting agencies. I would certainly like to have a copy of their comments, which I understand were delivered here today, because we would like to comment on them. I am sure that in your development of their testimony—I presume they will testify—you will determine whether we were correct in our belief that the main objections to S. 1644 were removed as far as the burdensome duty and difficulty of administering that proposed bill were concerned.

Mr. FORRESTER. Let we pursue that a little further. Of course I agree that the gentleman has not seen the testimony of the various contracting agencies that will be put into this record, but then the gentleman did hear the testimony and is familiar with the testimony of the Government contracting agencies of last year.

Mr. DUNN. That is right.

Mr. FORRESTER. Won't the gentleman just assume that probably it would be based upon may be the same reasoning this time?

Mr. DUNN. Basically it would be as far as the necessity for Government approval is concerned. If they felt that they had to interpret section 2 (g)—as Congressman Cramer has indicated, it needs clarification—that is, if they had to approve whether there has been a completion of the contract or refusal to complete, I would certainly agree to their position that that is no job for them and that they could not administer that. We would say amend that, but we do not so read that section. I am jnst giving you one as an example.

Their objection to S. 1644 was that they would have to move in and approve or disapprove every act of the general contractor, and in doing so where they tied the hands of the general contractor in his selection they were also responsible for what might result from the change.

Mr. FORRESTER. I remember that argument and that argument was seriously debated and disputed, but I couldn't help side with the attorney who was representing the Government, which was to the effect that where the Government moved in and where the Government made decisions, and where the Government by decision could destroy a property right, the Government would be liable. Has that objection been removed?

Mr. DUNN. Yes, sir. I call your attention to page 9, line 23, section 4 (d):

> Nothing contained in this Act shall in itself be construed to create any contract or property rights in any person.

Mr. FORRESTER. I notice that. However, let's discuss that a bit. Even with that provision in there would that change the law on contracts?

Mr. DUNN. The question is whether by virtue of this bill or law a subcontractor who had been named has any property or contractual rights where he had been substituted. Is that the question? Say that is one of the questions.

Mr. FORRESTER. What I am asking is about that recitation in there about there not being a property right. As I understand it, when you have a contract I think that is a property right.

Mr. DUNN. Are you referring to the naming?

Mr. FORRESTER. No; that phrase that you just read there.

Mr. DUNN. I am quoting from this section:

> Nothing contained in this act shall in itself be constructed to create a contract or property right in any person.

I am sure that counsel for the proponents when this was developed had in mind preventing persons who are named by the general contractor from having a right by virtue of the naming called for in this bill. He was not thinking, in my opinion, of a contractual right which develops between a general contractor and his mechanical subcontractor.

Mr. FORRESTER. I catch it.

Mr. DUNN. After that contract is made it is a matter of contractual law, but I think it is a very good point to remember, and I hope the legislative history of this bill makes clear that we are not creating a third party beneficiary rights or any other rights in persons because there is a naming.

Mr. FORRESTER. I will agree with you on that explanation; that, certainly, because a person has been named as a subcontractor, that would not mean contract right. I follow you that far.

Mr. DUNN. The next thing, sir, would be if you had a contract awarded and the general contractor in turn has awarded a subcontract. If he changes his subcontractor at that point, that is something he has to work out between himself and his subcontractor, and you would do the same thing today.

Mr. FORRESTER. In other words, that is taking the Government off the spot. The Government won't have to make the decision at that time; is that right?

Mr. DUNN. I think today your law would be the same. If I am a general contractor and I have a contract with the United States Government, and I let a subcontract with you and for some reason or other now after the contracts are awarded I am substituting another subcontractor, what the relationship is between you and me is something of contractual law, as well as something that might result from this bill. Am I correct?

Mr. FORRESTER. This is very true, unless the Government has some discretion and the Government steps in there and makes some kind of decision.

Mr. DUNN. That is a good point. I believe that this bill in no way prevents the general contractor from substituting his mechanical subcontractors even after the contract is awarded and even after he has in turn awarded a mechanical subcontract. However, if there is a monetary benefit to the general contractor as a result of this change, that must inure to the Government. However, there is nothing to prevent him from ever changing his subcontract without approval of the Federal Government.

Mr. FORRESTER. And the contracting agency doesn't have to step in and make any decision?

Mr. DUNN. That is right, sir.

Mr. FORRESTER. Then I would think, offhand, that would relieve that legal question that was raised, and which I couldn't help but think there was some basis for that objection.

Mr. DUNN. There was certainly a real basis for that objection. I would like to have Mr. Glassie state whether or not I have correctly expressed the interpretation which can reasonably be given to paragraph (h) of section 2.

Mr. GLASSIE. I think it is quite correct that this present bill doesn't require Government approval for a change of subcontractors in any case.

Mr. FORRESTER. I think so, too.

Mr. GLASSIE. It was intended to eliminate, and I think clearly does, legal objection which was made last year. Frankly, I didn't agree with the legal objection last year but, regardless of that, it is eliminated.

Mr. CRAMER. Then, in your opinion, with the way the act is written, under (g) there would be no finding required by the Government as to whether a contract was breached or not?

Mr. GLASSIE. There would be no finding required by the Government, certainly.

Mr. CRAMER. And you wouldn't have any objection to it being clarified if we deemed it necessary to do so in order to make it perfectly clear the Government isn't involved in (g)?

Mr. GLASSIE. I think that is absolutely correct. The only way the Government is involved is to the extent that it was to become involved to collect money to which it becomes entitled under the bill.

Mr. FORRESTER. I don't want to prolong this too much, but I did think there was some objection at that point, plus the additional practical objection I had, which is this: We happen to be a subcommittee and, when the Government exercises some discretion and somebody has some loss, although there may not even be a legal standing to go to court, what they do is come in by a private bill and it comes before us, and I didn't want to be in the position of creating a situation where I was going to have to decide whether or not, by some omission on my part, I was going to have to take more of the taxpayer's money to pay him off. That is a thing that is very real indeed.

Mr. GLASSIE. That, to, is eliminated, if I may say so, by this change.

Mr. DUNN. Mr. Chairman.

Mr. LANE. Go right ahead.

Mr. DUNN. I know this subject of paragraph (g) is very complicated, but I would like to read (h), as the way I understand it reads:

> If for any reason not specified in subsection (g) and after the expiration of the period referred to in subsection (f) and after the award of the contract to him, a general contractor under a lump-sum construction contract prefers to have any major category of mechanical specialty work on the project covered by such construction contract, as to which he has named a contractor under subsection (b) hereof, performed by a contractor other than the one named in accordance with said subsection (b), the general contractor may engage such substitute contractor, if prior to such change, (1) the general contractor submits to the contracting executive agency in writing the name of the substitute contractor and such information as the contracting executive agency may request as to any change in cost to the general contractor involved in the proposed change in contractors—

Stopping there, there is a burden on the part of the general contractor to submit the statement in writing. It doesn't say it has to be approved. He may change his subcontractor that he has named, but that is after the contract has been awarded to him.

Mr. FORRESTER. That is the way I understand it.

Mr. LANE. Is that all, Mr. Dunn?

Mr. DUNN. Yes, sir.

Mr. LANE. Mr. Cramer.

Mr. CRAMER. I point out for your attention in that with respect to subsection (g) doesn't require in regard to that section in notifying the executive agency that he state anything except the name of the substitute contractor.

Mr. DUNN. That is correct.

Mr. CRAMER. How does the executive agency know when a substitute is being submitted, whether it is under (g) or (h)? Of course, that is a simple matter to clarify, but, the way it is written now, I don't think it is clear. I think your point is well taken.

Mr. CRAMER. It should be the name of the substitute contractor or pursuant to this section, prescribing one of the above reasons.

Mr. DUNN. That is right.

Mr. CRAMER. And also with regard to this section you just read on page 6, writing the name of the substitute contractor and such informa-

tion as the contracting executive agency may require or request as to any change in cost to the general contractor involved in the proposed change in contractors, I think possibly that should be clarified to clearly show that the only information the contracting executive agency shall have a right to request is that relating to the change in cost and nothing else. Otherwise they can request information as to why this subcontractor was substituted. You get right back into the old factfinding situation, which I think the committee should try to avoid. That is the point I have been trying to make.

Mr. FORRESTER. So we won't have to pay them off.

Mr. CRAMER. That is right.

Mr. LANE. If there is nothing further, may I announce now for the record that this committee has notified the various Government agencies that have anything to do with these contracts that may come under the provisions of the bill. We notified the Atomic Energy Commission, the Department of Interior, Comptroller, General Services Administration, Department of Defense, and Department of Justice. We have also said that if they so desire, they may appear before this subcommittee and testify. The only one of the agencies that intimated their desire to come here was the Department of the Interior. The representative appeared here today, and will submit a statement later.

In view of the statement that we received yesterday from the Department of Defense, we have asked General Wilson to come before this subcommittee and testify. This afternoon a report has been received from the Atomic Energy Commission, and the only agency up to now that we heard from that wishes to testify here is the Department of Defense, whose representatives are coming here at the request of this subcommitte purely as a result of the report sent up here.

Mr. FORRESTER. Mr. Chairman, the Department of Defense will pretty well cover the various contracting agencies anyway, won't it?

Mr. LANE. Yes. I think it will, and because it has most of the contracts, I assume, I suppose we at least ought to have that agency of Government come before us so that members of the subcommittee would have an opportunity to interrogate the Department.

Mr. FORRESTER. And that will be General Wilson, who is coming tomorrow?

Mr. LANE. No. General Wilson said he would come tomorrow after 11 o'clock. I hadn't finished my statement, Mr. Forrester, but due to the fact there is a lack of hearing rooms available tomorrow, our hearing today will have to adjourn over to some day in the early part of next week, when there will be adequate hearing rooms for this subcommittee to have a further hearing, and at that time further opportunity may be given to submit statements, as Mr. Glassie wants to submit a statement; and Mr. Dunn, do you?

Mr. DUNN. Yes, please. In accordance with Mr. Volpe's request we would like to submit a supplement.

Mr. LANE. That is perfectly all right. Or anybody else who wishes to submit any further evidence.

Mr. FORRESTER. Mr. Chairman, I would suggest, and I guess it is the chairman's ruling, if there is any new and material matter brought up, then anyone in opposition would have the right to make a reply to any new and additional points that were raised.

Mr. LANE. Fair enough, certainly.

Thank you, everybody, for attending here and we appreciate the help and the assistance of all the witnesses.

Mr. LANE. I am attaching copies of reports from the Government Departments, to be made a part of the record and Mr. Brickfield will see to it that any additional reports which may come in at a later date will also be made a part of these hearings.

(Whereupon, at 4:15 p. m. the hearing was recessed subject to call.)

(The information referred to follows:)

B-109181

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, February 27, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Further reference is made to your letters of February 14, 1957, requesting our views on H. R. 3241, H. R. 3339, H. R. 3340, and H. R. 3810.

The bills are identical and are designed primarily to protect prospective mechanical subcontractors by preventing so-called bid shopping after award of the prime contract.

In the past we objected to similar proposed legislation primarily on the ground that it would impose additional unnecessary burdens of administration on Government agencies. In expressing our views, however, on bills S. 1644, H. R. 7637, and H. R. 7676, introduced in the 84th Congress, in letter to you, dated September 6, 1955, B-109181, we pointed out that inasmuch as those bills did not include many of the burdensome administrative features which we had objected to in previous bills of a similar nature we had no recommendations regarding the merits of the question as to whether the Government should endeavor to protect subcontractors in the manner proposed in the bills.

Inasmuch as the instant bills do not contain the burdensome administrative features which we previously considered to be objectionable, we likewise have no recommendations to make regarding their merits.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

UNITED STATES ATOMIC ENERGY COMMISSION,
Washington, D. C., March 19, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: This is in reply to your requests for our views with respect to H. R. 3241, H. R. 3339, H. R. 3340, and H. R. 3810, bills to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes, and to your invitation either to have a representative appear before the subcommittee conducting public hearings on H. R. 3339 and related bills or to submit a statement for inclusion in the record.

We believe this statement will acquaint the subcommittee with our views on the proposed legislation and we do not plan to have a representative testify at the hearings. Since all of these bills appear to be alike, we will address our comments to H. R. 3339 with the understanding that they apply equally to the others.

In the past we have been unable to recommend enactment of similar proposed legislation because we were unable to identify any benefit resulting to the Commission from such enactment, and we did perceive certain apparent disadvantages such as increased administrative burdens and reduction in the general contractor's responsibility for performance of the contract work.

We also are unable to determine that any overall benefit will result to the Government from enactment of H. R. 3339. The bill contains provisions that alleviate some of the objectionable features of previous related bills, but it will still increase the administrative burdens of contracting agencies. The provisions relating to the 5-day period in sections 2 (b) and 2 (f) and the detailed informa-

tion required from a general contractor by section 2 (b) in lieu of his listing the name of a subcontractor for a particular category of mechanical specialty work provide a number of additional possibilities for errors in submitting bids which could result in numerous problems to a contracting officer in determining if a bid is responsive and who is the low responsible bidder. As was the case with previous bills, additional administrative work will result from activities such as the listing of each major category of mechanical specialty work in invitation for bids, listing of mechanical specialty subcontractors in general contractors' bids, reviewing notifications from general contractors of changes in subcontractors, and requesting information from general contractors when they fail to comply fully with the provisions of the bill. All such requirements and activities increase the possibilities of delays, errors, claims, disputes, and litigation.

In addition, if mechanical specialty subcontractors are entitled to the treatment specified by the bill, we believe it would be difficult to resist a broadening of the provisions to include other types of subcontractors and sub-subcontractors. Such extended application would increase administrative burdens even further.

The restrictions on selecting subcontractors are inconsistent with the general Government policy of holding a prime fixed-price contractor responsible for all work under his contract, including the selection of his subcontractors and the satisfactory performance of their work. The increase in administrative details that would be caused general contractors by enactment of H. R. 3339 and the added restrictions on selecting subcontractors could, in our opinion, reduce interest among general contractors for Federal construction work. We also perceive difficulty in enforcing the provisions of the proposed legislation since the bill makes no provision for penalties for noncompliance.

Sections 4 (a), 4 (b), and 4 (c) tend to protect the Government against privity of contract with any subcontractor, relief of responsibilities of the general contractor, and action by the general contractor or his subcontractors for requiring approval or acceptance by it of any subcontractors. These provisions are desirable, but we believe they will not prevent the Government from becoming involved in controversies concerning subcontractors as a result of its compliance with the provisions of the bill. We believe the proposed legislation will result in an increase in controversies involving the Government.

There is already a large body of rules, requirements, and restrictions involved in the awarding of public contracts, which make it complex and burdensome to do business with the Government, particularly for small business and for organizations new to Government work. Because of this, and because additional requirements and limitations multiply these problems and their attendant pitfalls for both private concerns and the Government, we think that any legislation designed to add new mandates should offer clear and strong substantive advantages to overcome these disadvantages. We are unable to perceive such compelling advantages in the proposed legislation.

The Bureau of the Budget has advised us that they have no objection to the submission of these views.

Sincerely yours,

DAVID F. SHAW,
Assistant General Manager.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., March 21, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: This responds to your request for the views of this Department on H. R. 3241, H. R. 3339, H. R. 3340, and H. R. 3810, identical bills to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.

On March 20, 1956, we submitted to your committee a report on S. 1644, 84th Congress, which was then before your committee for consideration, in which we recommended against the enactment of that bill and discussed our reasons for such recommendation.

While the subject bills now pending are not identical with S. 1644, as it was referred to your committee, their provisions are similar and their purpose is the same. Accordingly, our recommendation against the enactment of S. 1644 and

the supporting reasons therefor are equally applicable to H. R. 3241, H. R. 3339, H. R. 3340, and H. R. 3810, and we recommend against the enactment of any one of the bills.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

D. OTIS BEASLEY,
Administrative Assistant, Secretary of the Interior.

(The following report is the one referred to in the above communication.)

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., March 20, 1956.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CELLER: This responds to your request for the views of this Department on S. 1644, a bill to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.

We recommend that the bill not be enacted.

S. 1644 provides that executive agencies, advertising for bids on lump-sum construction contracts, shall list each major category of mechanical specialty work. Prime contractors would be required to list in their bids the names of subcontractors who will perform the work in each specialty category. The bill would not prevent prime contractors from performing their own mechanical specialty work. If a subcontractor should fail or refuse to perform, the prime contractor would be permitted to engage a new subcontractor and he would be required to give notice of the change to the contracting agency. Should the prime contractor desire to engage a subcontractor, other than one designated in his bid, for some other reason, he would have to notify the contracting agency of the proposed change and such information regarding any change in cost to him resulting from the change in subcontractor as the contracting agency might request, and he would have to obtain the approval, in writing, of the contracting agency in order to engage the substitute subcontractor. The bill would apply to contracts for amounts in excess of $100,000 which are to be performed within the continental limits of the United States and Alaska, unless the head of the agency were to determine with reference to a particular contract that the provisions of the bill would result in undue delay which the public exigency will not permit. The provisions of the bill would not apply to certain types of construction, defined in section 3 (2), including water supply and power development projects.

A substantial amount of the funds appropriated annually to the Department of the Interior is expended on construction work under contracts which are of the type that would be subject to the provisions of S. 1644. In our opinion, the cost of the work to the Government would be increased by an adherence to the provisions of the bill. Many major construction contracts take as long as two or three years to complete. In accordance with present practice, mechanical specialty subcontracts are often let at the time the particular work is to be performed, since a substantial portion of this work is done near the end of the construction period. The contractor lets the subcontracts at prices then applicable, without affecting the cost to the Government. In general, where prime contractors are unable, or do not attempt, to obtain firm bids for specialty work prior to bid opening, their experience permits them to roughly estimate the cost of the work for bidding purposes and to anticipate possible savings from further negotiations with specialty contractors. In the event S. 1644 is enacted, it is likely that subcontractors will agree to perform the work only at a price sufficiently high to protect themselves against every possible contingency which might arise between the time of the bid of the prime contractor and the time of performance. Secondly, the Government would lose the possible price benefit resulting from a longer period of negotiations between prime contractors and their prospective subcontractors.

Another element of cost to the Government inherent in the bill is the increased administrative expenses involved in connection with the Government's proposed increased responsibilities. The cost of designing and preparing specifications would be increased because of the necessity for arranging and subdividing bid

items under the various categories of work susceptible to such contracting, as defined in the proposed bill. Difficulties arising in the determination of proper categories for specialty work, because of varying practices in different areas, might well result in troublesome and time-consuming problems for the contracting agency. In addition, the bill would require a certain amount of policing by the Government of prime contractors' activities in connection with their use of subcontractors, and would inevitably draw the Government into controversies between prime contractors and subcontractors. Under existing law, the Government personnel administering contracts do not expend their time and efforts on these matters and the Government's sole concern is with the prime contractor's performance of his contract in an acceptable manner within the contract period.

We are aware that the bill is designed to do away with so-called bid shopping by prime contractors on Government construction jobs. Quite apart from, and in addition to, the adverse effect it would have on the Government's objective to have the work done at the lowest possible cost, we anticipate that enactment of the bill will have certain other adverse effects. For example, it could tend to promote the acquisition by large contractors of specialty concerns so that their bids on contracts could be made with a minimum of additional effort in complying with the requirement that there be listed the persons or concerns to perform the specialty work. This could result in less competition for specialty work and would reduce opportunities for small business concerns to participate in Government work.

We do not consider that any public policy or interest is harmed in the present system of negotiating and bargaining to secure the lowest cost for specialty work, either before or after an award of contract; rather, this is the normal and usual method of transacting such business in our free enterprise system which has historically resulted in the lowest cost to the Government for the acceptable performance of its contracts.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRED G. AANDAHL,
Assistant Secretary of the Interior.

GENERAL SERVICES ADMINISTRATION,
Washington, D. C., March 19, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: Your letters of February 18 and 20 transmitted H. R. 3241, 3339, 3340, 3810, and 4313, bills to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes, and requested an expression of our views thereon.

The bills are practically identical and their main purpose is to protect prospective mechanical specialty subcontractors from the practice in the construction industry referred to as "bid shopping." This is proposed to be accomplished by requiring general contractors, who bid on Federal construction work, to specify in their bids the names of the subcontractors who will perform the mechanical specialty work involved. Provisions are included which permit the general contractor, under certain conditions, to substitute subcontractors for those named. The bills have eliminated some of the features which we considered objectionable in similar bills introduced in previous Congresses, but they still contain objectionable features. Our comments on some of these are repetitious of those made by GSA on the previous bills.

Important improvements have been made in the present bills in that they allow a period of 5 days after bids are opened in which a general contractor may substitute subcontractors for ones named in his bid. This permits him more time to properly evaluate subbids or to determine which subcontractors would most satisfactorily perform for him. Also, if the general contractor states in writing with his bid that he had made certain efforts to obtain an acceptable subbid but was unsuccessful, he is allowed a period of 5 days after bid opening in which to obtain the subbid.

The proposed legislation would considerably increase the administrative problems of the Government, at an undeterminable cost, and would place restrictions upon the freedom of operations of general contractors. It would be discriminatory as it is primarily designed to protect only mechanical specialty subcontractors and does not cover other trades, sub-subcontractors or suppliers. The requirement for naming mechanical specialty subcontractors would undoubtedly establish a strong precedent which could lead to introduction of subsequent legislation covering subcontractors of all construction trades and their sub-subcontractors and suppliers. This would result in still greater administrative problems and costs and in greater restrictions of operations within the industry.

The complications of present Federal construction contracts tend to discourage bidding and the proposed legislation could be expected to further decrease the number of bids submitted. Among the complications is the one of alternate bids. A large percentage of bidding documents for construction contain provisions for alternate bids to provide a basis for award within funds available. Because of varying prices received from subcontractors on these alternates it would be difficult, if not impracticable, for general contractors to name the mechanical specialty subcontractors prior to actual determination of the alternates which will be included in the award.

The bills would increase the possibility of problems in awarding the contracts in that they would provide further areas for errors in bids and in determining whether bids were responsive. For example, either intentional or unintentional omission of any or some of the requirements of section 2 (b) by bidders would pose difficult problems in awarding contracts and would delay awards.

GSA has not encountered positive evidence of bid shopping in connection with its construction contracts and thus our experience does not indicate a need for the proposed legislation. We do not favor its enactment as we believe the disadvantages resulting therefrom would outweigh the advantages gained.

The Department of Defense is recommending to you certain changes in the text of the bills. For the sake of brevity they are not mentioned herein, but we have reviewed them and concur in their incorporation in the bills if the Congress is disposed to enact the proposed legislation.

In addition to the changes in text recommended by the Department of Defense, we recommend the following, reference being made to H. R. 3241 as typical of the bills reported on:

(1) Revise the last proviso beginning at line 12 on page 3 of section 2 (b) to read:

"*Provided further*, That in the event the apparent low bidder has submitted such a statement in lieu of listing the name of a contractor, he shall, within five days (Saturdays, Sundays, and Federal holidays excepted) after the date of the opening of the bids, notify the executive agency in writing of the name of the contractor with whom he will contract for the performance of such category or that he will himself perform such category. Such notification shall be made by any other bidder within five days (Saturdays, Sundays, and Federal holidays excepted) after the date of receipt of a request therefor by the executive agency."

This revision would relieve all unaffected bidders of a needless burden.

(2) In section 2 (g), page 5, line 8, place a comma after the word "therefor" and insert after the comma the words "the general contractor at any time may engage a substitute or different contractor to perform such work or he may himself perform such work;".

In this same section 2 (g), page 5, line 12, strike out the words "at any time may" and substitute the words "shall, if so requested by the contracting executive agency,".

These revisions will leave it permissible for the general contractor to engage a substitute contractor or to do the work himself under the conditions described in lines 3 through 8 of section 2 (g) but make such action mandatory, under the conditions described in lines 9 to 12 of section 2 (g), if the contracting executive agency so requires.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

FRANKLIN G. FLOETE, *Administrator.*

91687—57——7

DEPARTMENT OF THE ARMY,
Washington 25, D. C., March 19, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of Defense for the views of the Department of Defense with respect to H. R. 3241, 3339, 3340, and 3810, 85th Congress, bills to prescribe policy and procedure in connection with construction contracts made by executive agencies and for other purposes. The Department of the Army has been delegated the responsibility by the Secretary of Defense to express the views of the Department of Defense thereon.

The Department of the Army, on behalf of the Department of Defense, has considered the above-mentioned bills. These bills, which are identical, are a substantial revision of S. 1644, 84th Congress, which passed the Senate on July 27, 1955, but failed to pass the House of Representatives.

The main purpose of the bills is to protect prospective mechanical subcontractors from the practice in the construction industry generally referred to as "bid shopping." This is a practice where, in some instances, a general contractor, after award of the prime contract to him, shops for specialty subcontractors to do the work at a lower price than that offered by some other subcontractor in preparing his bid. Bills to accomplish this purpose were also introduced in the 82d and 83d Congresses.

The present bills are a simplified version of the previous bills and remove some and lessen other objectionable features related to the administrative problems involved. But certain objections to the proposed legislation would remain. These may be summarized thus: The bills are designed to protect only subcontractors engaged in mechanical specialty work, whereas bid shopping in the construction industry admittedly exists also with respect to nonmechanical specialty groups and reaches the subcontractors furnishing work and materials to subcontractors. If bid shopping is considered by the elements of the construction industry as undesirable or unethical, the matter should be one which calls for action within the industry itself rather than resort to legislative action. Enactment of the proposed legislation would project the Government into the operations of a preferred group of private industry without affording portection to others in the same industry or other industries who are similarly affected. Moreover, such proposed legislation is considered unnecessary and not advantageous to the Government. It provides further governmental controls over private industry. Also, there would be additional administrative costs.

In addition it is noted that the proposed legislation as written would permit bid shopping until the expiration of 5 days following the date of opening of bids. Moreover, the proposed legislation does not expressly provide the actions which may be taken by the Government in the event the general contractor fails to comply with the requirements imposed.

It is to be emphasized that the proposed legislation, if enacted, would be a departure from a long-established practice in policy and procedure in the letting of construction contracts which has proved practicable. For the foregoing reasons the Department of the Army on behalf of the Department of Defense is opposed to the enactment of subject bills.

If the Congress should be disposed to depart from established practices and enact legislation of the type embodied in the instant bills, the following changes could be made which, to some extent, lessen the objectionable features of the bill, in H. R. 3241 (this being one of the identical bills and is selected merely for convenience of single identification of the text of the proposed legislation):

Section 1 (b), page 2, line 4, strike the words "or proposals."

Section 2 (a), page 2, line 12, strike the words "or contract"; same section and page, line 13, strike the words "or proposals."

Section 2 (b), page 2, line 22, strike the words "or contract"; page 2, line 23, strike the words "or proposal"; page 3, line 2, strike the words "or proposal"; page 3, line 6, strike the word "submission" and insert in lieu thereof the word "opening"; page 3, lines 6–7, strike the words "or proposals"; page 3, line 10, strike the words "or proposals"; page 3, line 11, strike the words "definite, complete, and responsive" and insert in lieu thereof the word "acceptable"; page 3, line 16, strike the word "of" as it first appears and insert in lieu thereof the word "after"; page 3, line 19, before the period insert the words "or that he will himself perform such category: *and provided further, however*, That if the general

contractor shall fail or refuse to comply with the requirements of the immediate preceding proviso, the executive agency shall not be precluded from awarding the construction contract to the general contractor nor shall the general contractor be relieved of any responsibility for the performance of the construction contract in the event the contract is awarded to him."

Section 2 (e), page 4, line 11, strike the words "or contract."

Section 2 (f), page 4, line 18, strike the words "on a competitive bid basis" and insert in lieu thereof the words "as a result of competitive bidding"; page 4, line 20, strike the word "of" as it first appears and insert in lieu thereof the word "after"; page 4, line 23, before the colon insert the words "or the general contractor may himself perform such work"; page 4, line 25, before the period insert the words "or that he will himself perform such work."

Section 2 (g), page 5, line 14, before the colon insert the words "or he may himself perform such work"; page 5, line 16, before the period insert the words "or that he will himself perform such work."

Section 2 (h), page 6, line 2, after the words "substitute contractor" insert the words "or he may himself perform such work"; page 6, line 5, after the words "substitute contractor" insert the words "or notifies the contracting agency in writing that he will himself perform such work"; page 6, line 8, before the semicolon insert the words "or if he performs the work himself"; page 6, line 11, before the period insert the words "or if he performs the work himself."

Section 3 (3), page 7, line 22, before the period insert the words "to a point 5 feet outside the building line."

Section 3 (4), page 7, line 25, after the word "of" insert the word "building."

Section 3 (7), page 8, strike this subsection in its entirety and insert in lieu thereof the following:

"(7) The term 'lump-sum construction contract' means a construction contract awarded as a result of competitive bidding."

Section 4 (c), page 9, line 16, after the word "contract" insert the words "for the purposes of this act"; line 18, same page, substitute a comma for the word "or" the second time it appears; line 20, same page, insert a comma and the words "or by any other person" before the period.

Add a new section as follows:

"SEC. 5. This act shall become effective 6 months after the date of enactment."

The reasons for the above changes are that there would be clarification of some of the provisions of the bill, including those provisions which appear to be in conflict with other provisions, and correction of provisions which appear to be in conflict with the spirit of the competitive bidding system; there would be substantial lessening, if not an actual elimination, of most of the administrative problems involved; the general contractor would be afforded an opportunity to perform a particular major category of mechanical specialty work himself under circumstances not now provided in the bill; and the application of the proposed legislation would be confined to construction contracts awarded as a result of competitive bidding.

A new section was added making the bill effective 6 months after the date of enactment so as to allow time for changes in regulations and forms required to carry out the provisions of the new legislation.

The fiscal effects of the bill cannot be estimated by the Department of Defense; however, enactment of the bill would somewhat increase Government administrative expenses.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

Inasmuch as the committee has requested that the report be expedited, it is submitted without a determination by the Bureau of the Budget as to whether or not it conforms to the program of the President. As soon as such advice is received it will be forwarded to your committee.

Sincerely yours,

WILBUR M. BRUCKER,
Secretary of the Army.

MAY 15, 1957.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice concerning the bills (H. R. 3241, H. R. 3339, H. R. 3340, and H. R. 3810) to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes.

The bills, which are identical, would require executive contracting agencies entering into lump-sum construction contracts to list each major category of mechanical specialty work in the contract documents; prohibit an agency from entering into a contract unless the name of the subcontractor who will perform each major category of mechanical specialty work has been specified in the general contractor's bid or proposal; require that, except under specified conditions, the general contractor have the specialty work performed by the subcontractor designated; and provide that substitution of subcontractors must be approved by the contracting agency.

Whether legislation of this general character should be enacted involves a question of policy concerning which this Department prefers to make no recommendation. It is recommended, however, that the bills be amended in certain respects.

It is noted that the terms "general contractor" and "contractor" are used interchangeably in the bills and that the terms "contractor" and "subcontractor" are also used interchangeably at times. While the context in which these terms are used may serve to explain them, it is believed that uniformity of terminology should be employed so as to avoid future misunderstandings.

Section 4 of the bills was apparently inserted in an attempt to effect a disclaimer of any privity of contract between the Government and the subcontractors for the purpose of avoiding potential liability of the Government to subcontractors under the prime contract. It is doubtful, however, that the language of the bills would fully protect the Government from liability in litigation which can foreseeably result from the proposed legislation.

Two types of claims or suits against the Government might arise under legislation on this subject; namely (1) direct suits or claims against the Government by subcontractors, and (2) suits by the general contractor arising from alleged interference by the Government in the control or approval of subcontractors. The Government has historically recognized only one party, the general contractor, and any legislation which would alter that relationship would appear undesirable. While the language of the bills would apparently avoid the possibility of direct governmental liability to subcontractors, and might meet the problem with respect to liability to general contractors, it is believed advisable to incorporate provisions to disclaim the creation of any new area of governmental liability to either general contractors or subcontractors. Accordingly, it is suggested that the following new subsection (b) of section 4 be substituted for that in the bills.

"(b) Acceptance by an executive agency of a bid or proposal setting forth the name of a proposed subcontractor, or approval of a statement of a general contractor setting forth the name of a proposed subcontractor, or awarding a contract to such general contractor after such acceptance or approval, or permitting or denying the substitution of a subcontractor in accordance with the provisions hereof, shall not be construed to constitute approval or acceptance by it of the particular subcontractor named or substituted nor shall such action (1) give any subcontractor a cause of action by reason thereof against the United States or any of its agencies, (2) relieve the general contractor of any responsibility for performance of the contract, or (3) enlarge in any way the liability or responsibility of the United States to the general contractor."

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely,

WILLIAM P. ROGERS,
Deputy Attorney General.

FEDERAL CONSTRUCTION CONTRACTS

WEDNESDAY, MARCH 27, 1957

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 2 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a. m., in room 327, House Office Building, Hon. Thomas J. Lane (chairman of the subcommittee) presiding.

Present: Representatives Lane, Forrester, Donohue, Boyle, Burdick, and Poff.

Also present: Cyril F. Brickfield, counsel.

Mr. LANE. The committee will kindly come to order.

The committee is meeting again to consider H. R. 3339, a bill that we started hearings on a week ago, to prescribe the policy and procedure in connection with construction contracts made by executive agencies, and for other purposes, and other related bills, H. R. 3340, Congressman Miller of New York; H. R. 3241, Congressman Madden of Indiana; H. R. 3810, Congressman Bray of Indiana; and H. R. 4313, Congressman Wright, of Texas.

I do not know whether or not we will be able to finish the hearing on these bills this morning, but in any event we will start and go along as far as we can with the understanding that 15 minutes to 12 it will be necessary for this subcommittee to adjourn, due to the legislative program in the House.

We will reconvene tomorrow morning, if necessary, to complete the hearing on these bills, having to do with these contracts.

The first witness we have this morning is Maj. Gen. W. K. Wilson, Jr., Deputy Chief of Engineers for Construction, Department of the Army. He will be accompanied by Captain Benson of the United States Navy, Bureau of Yards and Docks, and Mr. Seltzer, who is Chief of the Legal Division of the Office of the Chief of Engineers.

We are glad, at this time, to hear from General Wilson. We congratulate him on his promotion, as of yesterday, and welcome him here this morning to testify. I suppose it is one of his first official acts after his nice promotion.

Now, General Wilson, if you will take the stand.

TESTIMONY OF MAJ. GEN. W. K. WILSON, JR., DEPUTY CHIEF OF ENGINEERS FOR CONSTRUCTION, DEPARTMENT OF THE ARMY

General WILSON. Thank you, sir.

Incidentally, this is my first testimony before a congressional committee.

Mr. LANE. It is quite an honor for us.

General WILSON. Mr. Chairman, I am here in response to your invitation, as a representative of the Department of Defense.

I have a prepared statement, which you have been handed, and I can either read it or attempt to amplify it instead, or attempt to answer any questions you may have to ask on the subject.

Mr. LANE. I imagine, General, as soon as a few more of the committee members arrive, they will be desirous of asking you questions, and you may proceed any way you think it is best for yourself; whether you want to read the statement or talk extemporaneously.

General WILSON. If that is the case, sir, I will brief the statement first.

Mr. LANE. Very well.

General WILSON. The Department of Defense is much interested in this legislation. Our concern lies in two fields.

First, is the principle of the bill itself, the tendency to draw the Government into the business, as between private concerns; and second, it is as to the probable increase in the administrative activities, with the result in an increase in the administrative costs.

With regard to the first, we do not particularly like to put ourselves in between private organizations, who are working on a job for us.

We concur that the concept of bid shopping is poor, and we certainly do not desire in any way to support that practice; inasmuch as it is poor, we fail to see where the legal extension of this principle—were this legislation to be enacted—would not result in extending this same type of legislative protection to the remainder of the subcontractors. These conditions are somewhat difficult, admittedly, but the practice of bid-shopping can affect them to a large extent, the same way as it would the ones who are given protection under this legislation, and again, the practice is wrong. We feel it extends also to their sub-subcontractors—it is obviously just as wrong for a subcontractor to permit the practice to go into the dealing with his sub-subcontractors, and, going further, you can extend it to the suppliers.

Obviously, in our opinion, if it does carry through to this possible logical conclusion, we reach a place of administrative cost in trying to work out contracts with ramifications that could involve many things.

We admit that we can operate under the legislation, as worded, preferably with the suggested changes which have been made. However, we feel very strongly that it establishes a policy which, if carried out to conclusion, will place us in a position where it is very difficult administratively, to carry on.

With regard to the administrative difficulties, we have a great many hypothetical instances that we can conceive of, which will affect the situation.

In the statement, we go into a good deal more detail and length on this principle. We point out that this same concept has been under consideration for a long period of time.

The first bills on the hearing were in the 72d Congress. The hearings were in April 1932, when we were requiring contractors on public building projects to name their subcontractors, material men, and supply men.

This is covered on page 2 of the prepared statement. Those in support of the bill at that time included representatives of various organizations, such as the National Association of Ornamental Iron, Bronze & Wire Manufacturers, Structural Slate Association, Allied Building Material Industry, International Cut Stone Contractors, and so on, which would indicate that there was some concern felt on its possible extension.

In the 75th Congress, as you know, legislation was passed, but was vetoed by President Roosevelt on June 25, 1938, in which he said:

> While I recognize the evils of "bid-shopping" and favor any provision which will promote the prompt payment of the obligations of contractors for labor and materials, it is believed that this bill will have no tendency to accomplish either of its objects and will merely create a multitude of administrative difficulties.

These bills are merely cited for the purpose of showing that bid-shopping practices of general contractors affect all subcontractors, material men, sub-subcontractors, to some extent.

There is indication that all of the subcontractors are interested in this type of legislation to some extent. In the 83d Congress there was a joint hearing before the Subcommittee on the Judiciary in April 1953, including subcontractors performing mechanical specialty work. They have not been included in subsequent bills, but even in the language of this present legislation there is a statement in there to the extent that such procedures should be so established as to eliminate the unfair trade practice of bid-shopping by general contractors or subcontractors.

I might sum up our objection in principle again by stating the Department of Defense's position is that we can operate within the legislation presently before you, but we object to the principle involved, that is, of having the Government step into and between the operation of private concerns doing business with us. An even greater concern lies in the legal extension of this principle to further classes of subcontractors and from them to sub-subcontractors and suppliers.

With regard to administrative problems, they can well arise. Admittedly, we are thinking this out, and to some extent, in the abstract, they are hypothetical, but we have seriously attempted to figure out the problems that will arise, in order to indicate the things that have given us concern.

With regard to negotiated contracts, the general defense policy in general is to use fully advertised competition to the maximum extent. However, there are occasions and times in certain types of construction, particularly with regard to classification, where the necessary speed in an emergency situation, and things of that sort arise, where you have to utilize a negotiated contract.

As it is working out in general, I would say, in the Corps of Engineers we have not over 5 percent of our contracts in the United States that are negotiated. However, in the case of a negotiated contract, the 5-day provision is almost an impossibility, because many of the negotiations take more than 5 days. So, that is a technicality, the fact that the contractor would have 5 days to team up on or make any changes he considered necessary in his listed subcontractors—and probably would. The 5 days would elapse prior to the conclusion of the actual negotiation.

The possible effect of this legislation would be to have the various subcontractors as well as the prime contractors sitting around a negotiating table and making it much more difficult to reach agreement, probably because of the more people you have in a negotiation the more difficulty you have in reaching a point. This is not an insurmountable problem. The 5-day portion is impractical, because in fact most negotiations take more than 5 days after the submission of a proposal.

Mr. LANE. General, what would you say should be the number of days in the negotiated contract?

General WILSON. Well, if it must be included in the negotiated contracts, in the legislation, I would suggest the 5-day period run 5 days subsequent to the conclusion of the negotiation. I suggest this period if you intend to include negotiated contracts in the bill. We strongly recommend that the legislation be worded so as to eliminate language throughout the bill applicable to negotiated contracts, because of the limited number of them, and frankly because in a negotiated contract you do often know who the sub-subcontractors are going to be because of the very reason, to make it negotiable, they have to pick a type of man who can do a particular job, and quite often you have him discuss his prospective contractors before you will say he is the man to get the job. So, I do not really believe you have a problem to be corrected, to the same extent, in the negotiated type of contract, that you have in your advertised competitive type.

Again, one of the basic reasons for negotiation is time, and we would like to save the extra time. However, if it is necessary to include it, I would say you could cover it by making the 5-day period run subsequent to the conclusion of the negotiation.

We come now to the wording of the legislation. The question of who will decide when the subcontractor is in default.

We want, if there is any way possible, to have the Government not in any way responsible for making that determination, because that can lead to any amount of administrative, legal, technical, and other types of effort. in order to make that type of determination.

We believe that what the intent should be, to let the action be between the subcontractor and the prime contractor. The subcontractor's protection would be to go to the courts, if necessary, to get his necessary protection. Having the Government contracting officer step in there and make that decision can involve a cross section of his staff and use of a considerable amount of their time. Of course, time itself results in administrative costs.

I can visualize a prime contractor who, in his own mind, felt he might well do the job better and finish it on time, for some reason, if he changed subcontractors in midstream.

I can visualize a subcontractor's side of the situation, when he says, "Well, no, I did not perform right up to schedule because the prime contractor did not schedule the other subcontractors so that they would be out of the way for me to finish, and, therefore, even though it does not strictly come up to my requirements, it was not my fault and I should not be taken off the job. Thus, making a determination as to which of those two individuals is correct becomes an extremely difficult problem. We actually have that problem to an extent in some contracts now. We are trying our best to push the job and we actually

go to the prime contractor and ask him why he cannot move faster and he informs us that the subcontractor is in his way and he cannot do it. It is relatively easy to get in and give a nudge to several subcontractors of the prime contractor where, between them, they are dragging their feet, but when you have to make a legal determination as to which was actually at fault, it would become a very difficult problem.

To summarize, we realize that someone will have to make that decision. We strongly urge the wording be such that the Government not be placed in a position of having to make that decision.

Another phase of the problem, administrative increase in costs, will be the specialty work which is involved in the protected subcontractors. That may, in the long run, be a good result, but it will—that is, as to the ultimate price—but it will take more effort on the part of the original designers and administrative people, which will be a Government cost and which will go up.

I would not say it increases the ultimate cost of the building to the Government; however, in home cases it could, on the other hand, in many cases it could actually be a benefit.

Let is look at some of the kinds of individual problems that can arise. Let us say at a bid opening a subcontractor protests to the contracting officer, and says that he gave a prime contractor a bid on a particular item, yet that prime contractor did not list his name, did not list any names.

For instance, a subcontractor might submit proposals to contractors A, B, and C. A, B, may have chosen him and listed him as the one they would utilize on a particular type of work but C, the low bidder, might put down that no one gave him a bid which was responsive to the rest of the requirements. The subcontractor almost has a prima facie case in his favor if he can show that he submitted the same deal to C that he gave to A and B, because A and B thought it was good enough to use. Who will have to make that determination? Will our Government contracting officer be placed in a position of processing such a protest? And, if so, in the event his ruling is not acceptable to either the prime contractor or subcontractor, then that would be processed up through channels to the Comptroller General. I can see that happening reasonably often.

Mr. POFF. May I interrupt just a moment?

Mr. LANE. Yes, sir; go ahead.

Mr. POFF. Now, there will be no privity of contracts established, as is set forth in this legislation.

General WILSON. Well, let me put it this way: As contracting officer, I open bids, and at the bid opening a reputable subcontractor comes to me and says he protests the results of our opening. Perhaps, under the law, his protest does not have to be received. However, he presents his case, which is that he did give a good price to A, B, and C, and I can see for myself that A and B must have seen his price because they have got him listed on his specialty, but C says that he did not get any good bid.

Now, who has to determine whether it is factual that prime contractor C did or did not receive a good bid from a subcontractor?

Mr. BOYLE. It does not make any difference.

General WILSON. Well, C happened to be the low bidder.

Mr. BOYLE. The general contractor is the low bidder.

General WILSON. Yes. C, the low bidder, lists several subcontractors on this particular item of work, shall we say, air conditioning, and he says he did not receive any subcontractors' bids which were responsive, and so forth, and within 5 days he says, "I will give you a name."

Mr. BOYLE. Yes.

General WILSON. Is that statement taken as a fact, or does any action have to be taken thereon?

Mr. BOYLE. I do not think you have to check at all. I think the law gives them an opportunity to come forth within 5 days, and I think you should give it to him if he meets all the other requirements.

General WILSON. Let me carry this a little bit further—I told you there were hypothetical cases.

Mr. BOYLE. Let us not go into the whole realm of supposition. I can visualize what you are going to say, and I could conjure up a lot of hypothetical cases or suppositions along that line, but I do not think you need to bother at this particular time, with all possible instances in connection with this bill.

Mr. BURDICK. It seems to me it becomes important, in order to avoid any trouble later on.

Mr. FORRESTER. I imagine these hypothetical questions are approaches to some things that might take place in the future.

Mr. BOYLE. I think, based on all the experience that General Wilson has had in connection with his Government contracts, as Deputy Chief of Engineers for Construction, he has a lot of knowledge concerning the matter.

Mr. FORRESTER. The hypothetical cases you are presenting are based upon what practically happened, and does happen, in the contracts?

General WILSON. It has not happened as of today, because that has not been the requirement.

Mr. BURDICK. But it is apt to happen?

General WILSON. Yes. I have only got about three things here which I honestly feel concerned about.

Mr. BOYLE. I do not mean to challenge your veracity, General, and I do not want to leave the record stating that I cannot conceive of those things happening, but I am going to join with Mr. Poff in saying that, at this time, there is no privity of contract with the subcontractor, and the Army, at this time, does not need to concern itself with what is going to happen under this certification.

Mr. LANE. General Wilson, you may proceed.

General WILSON. My point is, if the subcontractor makes as good a point as he has in the case I presented, his next step would be to go to his logical support, which would be his Representative in Congress, and then we will get a letter telling us to hold up the matter.

Now, was the subcontractor telling the truth, or was the prime contractor? Whether or not we are legally required to hold up the matter until we look into it, I do not know, but I feel, as a Government agency, we would be in a pretty poor position if we told a Representative or Senator that was none of our business.

Mr. BOYLE. Again, for the purpose of the record, you are following a supposition with a further supposition.

Mr. LANE. You may proceed, General.

General WILSON. I believe, in order to protect ourselves, we will have to police or insure at least that the other bidders have a complete list of prospective subcontractors mentioned. It would not be sufficient to see that the low bidder does it, because, if something arises at the end of the 5-day period, and the low bidder does no longer qualify, then we would be in no position to take the second low bidder, had he failed to comply with the 5-day rule relating to submitting a name for this particular specialty and then did not do it. It will not be a great administrative expense, but there will be more or less some policing activity involved.

I am concerned that a man will honestly fail to list a subcontractor, or put down he, himself, wants to do the particular work, one portion perhaps. Maybe there are several sections in this bid, and he is interested in doing it all himself, but he fails to cover one particular phase.

The way it is, if it comes under section 2 (b), I believe we would be unable to accept his bid in this particular instance.

I feel certain that that can be corrected, as to wording, and I think some modification of this section on page 3—I refer to line 19. The Defense Department has recommended a wording which is covered in the report to the chairman on page 3.

In effect, what I am saying is, Would it be the intent of the law that we consider it as informal, which could be waived by the contracting officer, if one or more names failed to appear on the list, and the prime contractor demonstrated that he intended to put them in later?

The way it is presently worded, I believe the low bidder would have to be ruled out if he failed to list the subcontractor or to make a statement that he intended to do that particular work himself. That is a relatively minor point at this point, but it leads into mistakes in bids which do take up considerable time and cost.

Mr. FORRESTER. If he is thrown out on that technicality, it is not minor to him, is it?

General WILSON. No; no more than to the Government, if his price is the best. However, I believe it can be corrected in the wording. If it is not corrected in the wording, then I foresee administrative problems arising which will involve us in them.

Mr. LANE. Will your amendment take care of that?

General WILSON. Not completely. Mr. Poorman, who will testify following me, and Mr. Seltzer can get together and come up with a change which would probably take care of that.

Mr. LANE. The committee would like to have it.

General WILSON. I am now taking a case in which the low bidder has failed to submit 1 out of the 4 subcontractor names. Under the present wording it would go to the next bidder, or, let us put it this way—the low bidder says he will submit names within 5 days, and at the end of 5 days he does not submit names.

Under the present wording we would not be able to hold him to his bid; that, in effect, gives the bidder the opportunity to submit a price, see everybody else's price, and subsequent to that, walk out on the job just because he failed to carry through an administrative procedure.

I believe the wording we recommended in here will correct that particular one. Our primary basic principle is this: Once the man has submitted a bid, we do not want him in a position to choose whether or not he will do the work; that is the basic thing we are after. We do

not want to leave any loophole, where having exposed everybody's hand, he can through some administrative procedure or wording, just fail to comply with certain action, and thereby automatically eliminate himself from consideration as the low bidder. We are anxious to see the wording corrected so that cannot happen.

Mr. LANE. Do you think an instance of that sort might happen?

General WILSON. It happens now in various ways. Every now and then we will have a mistake-in-bid case, which, to me, looks as if the bidder is really trying to get out of that low bid. He finds out when everybody else has put in their bid his bid is too low. Actually, our basic policy on a mistaken bid, if a man makes a legitimate mistake, is to allow him to withdraw his bid. We are not in the business of trying to break a contractor. We do not, generally speaking, permit him to correct that mistake and still get the job.

Mr. FORRESTER. As I understand it, what you are saying is that the low bidder could deliberately, under the terms of this law, walk out of his contract?

General WILSON. Yes, as it is now worded. I mean, he could do so under certain circumstances. In other words, if he has listed all of his subcontractors he could not do it, but, if he listed 3 of them and said he would submit the other 2 names within 5 days and failed to do so, he could technically fail to qualify, and thereby not be the low bidder.

Mr. FORRESTER. What you are saying is if he finds out his bid is so much lower than all the rest, he will not supply the other two names, and will walk out?

General WILSON. That is correct.

We have recommended wording which would still permit the executive agency to go ahead and award the bid to him, if it was in the Government's interest, whether he submitted the names or not.

Mr. FORRESTER. You think then you can correct that?

General WILSON. In the wording, yes.

Where we cannot correct ourselves, however, will be this, which can well happen:

Suppose at the time we make the award the second low bidder or reputable subcontractor comes in and says he has information of dirty work, or some form of skulduggery, that the low prime contractor has violated the spirit and intent of this law.

If he makes a formal protest—which may be something which will be thrown out in the long run—we are going to be involved in considerable delay because, if he does not and will not accept the ruling of the officers concerned then we will have to carry the whole thing up to the Comptroller General, and we are losing time.

Now, delays mean administrative costs. The whole thing really gets down to this: Once the job is underway you have got a prime contractor and his subcontractors working, and one of the subcontractors decides he wants to get out and the prime contractor and the subcontractor part.

Who has to determine whether that was caused by a default? If you determine it was not because of a default but because the prime contractor wanted it that way, then we come to the problem of how much money we have got coming back, and there is no question there will be administrative time, action, and effort involved in making that determination.

What the Department of Defense desires, if possible, is to have the wording such that the contracting officer is not obligated to make this determination any more than it is absolutely necessary.

That sums up, generally speaking, our basic position, and, in principle, we do not believe we belong between the prime contractor and his subcontractors. They are doing business on a competitive basis, and we prefer not to have a tendency to get into this business any more than we have to.

If this principle is accepted, we see no reason why it would not be extended to other types of subcontractors, to sub-subcontractors, and to suppliers, which will magnify the problem and make it very, very difficult to operate. Under the present wording it is not too difficult an operation. However, the Defense Department agrees it can perform its work preferably if the changes indicated by us are accepted, including the elimination of negotiated contracts and confining the legislation to contracts in which 95 or more percent of the work is involved in the United States.

Lastly, we cannot prove conclusively any more than it can be disproven conclusively, there will be a savings to the Government. In fact, this will be included in the administrative cost, but we are certain their will be cost increases in the adminstrative effort.

Mr. LANE. When you say it involves cost, would the cost be of any substantial amount, as far as your guessing at the moment is concerned—I suppose that's what it is, guessing.

General WILSON. Yes.

Mr. LANE. A rough guess.

General WILSON. Yes, it would be. Although I cannot prove it, I can foresee the necessity of having two or three more people on the payroll for the purpose of doing this kind of work when you have a fairly sizable area and are covering a large amount of ground.

Mr. LANE. And that would be about the only administrative cost.

General WILSON. It will also take up the time of people, both at the administratively low level and policy and all up the line, which does not necessarily cost any more, but it means that they are not devoting their time to something that perhaps would be more productive. Whether that will result in the hiring of more people or not, I do not know.

Mr. LANE. On the other hand, do you think if this bill became a law the Government would be able to save some moneny on some of these contracts?

General WILSON. I think without question you will save some money on some, but I am not sure the net result will be an overall savings.

However, answering your question, yes, undoubtedly there will be some cases where there will be savings to the Government.

Mr. LANE. Do you think, General Wilson, there will be a substantial savings on some of these contracts, if this bill becomes law?

General WILSON. Well now, am really giving a personal opinion. No, sir; I do not think there will be a substantial saving. I personally feel where this type of practice is going on—and I do not like the practice—to get the job in the first instance the prime contractor is putting a figure in which is below what he is being quoted by some subcontractor, on the basis of his past experience, and he feels he will get them down to a figure that meets his price. In some cases he may

get them down lower and make more, and then in some cases he cannot get them down and loses.

Generally speaking, I do not think where we have competition he has been able to get the job; in other words, he has not taken across the board the higher price submitted by all subcontractors, being the low bidder, unless we have gotten some cases where there is absolutely no competition.

Mr. LANE. Are there any questions of General Wilson?

Mr. POFF. Yes.

General, you said a moment ago about 95 percent of your contract work was advertised and not negotiated; is that correct?

General WILSON. That is correct.

Mr. POFF. If this legislation should pass and we should exempt negotiated contracts from its coverage, do you think that might have a tendency to drive the Defense Department to negotiated contracts?

General WILSON. No, sir; because, as a matter of fact all of our pressure from above and within is to not use negotiated contracts. In other words, it is a nice deal all the way through when you can do it strictly by advertisement.

There is only a certain instance in which that would be necessary—a classified project, particularly a classified project entered into today and would have to be built tomorrow, and you do not have the time.

However, I feel good business on the part of the Government leads us to do it the competitive way to the maximum. I do not think the effect of the law will be that onerous that we will be trying to dodge the better business practice. If that answers your question.

Mr. POFF. Yes, it does.

I think every member of this subcommittee is anxious to relieve the Government of any additional administrative duties where cost is involved, and at the previous hearing several of us were concerned about subparagraph 2 (g).

In the proviso there is no requirement that the prime contractor furnish to the Government a reason why he is exercising his option under 2 (g), and I was wondering if you thought it might relieve the Department of some additional administrative details if we could amend that paragraph by adding at the bottom the following words:

Ascribing one of the reasons set forth in this paragraph.

Do you believe that the addition of those words would throw the burden on the prime contractor, and thereby relieve the Government agency of the duty of policing the practice under that paragraph?

General WILSON. Well, if I understand the legislation correctly, it would not hurt to add that, but I do not think it gets us off of the hook, because if we accept that at its face value without any checking, then the next step, as I understand it is, if we do not believe that, and we believe he is doing it for other reasons, for his own interests, then we presumably have to try and get some money back from him.

Mr. POFF. According to testimony given at the last hearing, you would not be concerned about that fact with respect to a substitution under paragraph (g) but only with respect to substitution under paragraph (h).

General WILSON. I am not up with you right at the minute.

Mr. BOYLE. It is on page 5.

General WILSON. I think you are correct on paragraph (g). I was thinking in terms of another paragraph.

Mr. POFF. If that language were added it would be the responsibility of the prime contractor to make that statement, and I do not believe a prime contractor would run the risk of making a misstatement about a thing as important as that.

General WILSON. Generally speaking, sir, that is the very point I am trying to make.

If you can make the wording such that it is between the prime contractor and the subcontractor and the contracting officer is not being responsible, then you remove many of our objections, because then we do not have the administrative work.

Mr. POFF. In other words, if I can briefly summarize the situation with which the agency would be faced, it would be this: If the prime contractor exercised his option under paragraph (f) or under paragraph (g), the administrative officer would not have to concern himself with the policing work.

However, if the prime contractor did not signify that he was exercising his option under one of those two paragraphs, but rather indicated that he was exercising his option under paragraph (h), then the contracting agency would have to police in order to take advantage of the lower subcontract price.

General WILSON. Right.

Mr. POFF. If that be true, would it not, from your viewpoint be an improvement on the bill to add such language at the end of paragraph (g)?

General WILSON. I believe it would be, but I would like to see if my legal adviser has an opinion on that.

Yes, I think it would improve it.

Mr. SPECK. Well, sir, from our point of view——

Mr. LANE. Will you give your name and occupation for the record, please.

Mr. SPECK. I am counsel for the Bureau of Yards and Docks.

I think that even if there is a protest from the subcontractor alleging that, in fact, he did not renew the option, I think we would be in a position of either holding up the job and finding out, in some way, whether the protest was made in good faith.

General WILSON. I believe it is possible to so word the law that the Government has even got the right to police it as far as the executive construction agency is concerned. We do not have to accept the protest, and that is the point I make.

Mr. LANE. Are there any further questions of the general?

Mr. BOYLE. Yes; I have some questions I would like to ask him.

Mr. LANE. Very well.

Mr. BOYLE. I am not too familiar with the field that this witness can cover, and in the event any of my questions are out of his area, I would be very happy to have him tell me who the individual would be that would have the better evidence on it.

Do you know a Roger Fulling? He was the Director of Construction for the Assistant Secretary of Defense, at the time of the last hearing.

General WILSON. Will you repeat the name?

Mr. BOYLE. Roger Fulling.

General WILSON. Well, I can only answer that by saying I believe I know who he is. I do not remember him distinctly.

Mr. BOYLE. At the time of this last hearing, he indicated he was highly interested in reducing the cost of Government contracts.

General WILSON. Right.

Mr. BOYLE. And there is no need of my propounding the same question to you, because I am going to assume for the purpose of the record that you are interested in cutting costs wherever you can?

General WILSON. Right.

Mr. BOYLE. And I want to tell you for the purpose of this hearing, in the light of all of the heat that is on the $43 billion defense budget, we can stipulate most of the people throughout the United States are similarly disposed. We are certainly interested in trying to find a method of saving money for the Government.

General WILSON. Right.

Mr. BOYLE. Referring to page 120 I ask you to refresh your memory and ask you to review this compilation or summary of bids received.

Referring specifically to that table, General, and if you need any more time to look at it, why, take all the time you want.

General WILSON. All right, sir.

Mr. BOYLE. Since this was submitted to me in answer to my inquiry of February 7, 1956, it is not current.

General WILSON. The Navy Bureau of Yards and Docks from September 1954, and those under Corps of Engineers supervision?

Mr. BOYLE. Yes.

Now, the Corps of Engineers has a connection with the Bureau of Yards and Docks, does it not?

General WILSON. No, sir.

The Bureau of Yards and Docks is the constructing agency of the Department of the Navy. The Corps of Engineers is the constructing agency for the Department of the Army, and we do a major portion of the construction work for the Air Force.

The Bureau of Yards and Docks does some of the Air Force construction work.

Mr. BOYLE. The tabulation shows there that there were only 158 bids and there were 200 contracts let. Do those figures indicate that observation?

General WILSON. That's what it appears to be, sir, but I would like to see if the Navy representative could answer that portion of it.

Mr. BOYLE. I will be glad to do that any time you see fit, but let me follow my line of interrogation:

Does the next column show 64 contracts let?

General WILSON. 64 bids.

Mr. BOYLE. 22 contracts——

General WILSON. Contracts let.

Mr. BOYLE. And the other figures show?

General WILSON. 92 bids and 21 contracts.

Mr. BOYLE. General, if the total amount is correct—and I have not added them up——

Captain BENSON. I would like to comment on that.

Mr. BOYLE. You will have a chance. We will hear from you real soon. Do you have any later figures on the sum total of Government contracts that were let since that date, February 7, 1956?

General WILSON. No, sir; I do not.

Mr. BOYLE. Of course you can get those records?

General WILSON. Oh, yes.

Mr. BOYLE. You will favor us with the number of contracts that were let by the three forces since that date?

General WILSON. Yes. That will take a little time, but it can be produced.

Mr. BOYLE. You will also get for the record the number of bids that were filed in connection with those accepted bids?

General WILSON. Yes; but I would like to ask a question in reverse: May I study this a moment?

Mr. BOYLE. Yes.

Captain Benson, I believe you had a question?

Captain BENSON. I am Captain Benson, of the Bureau of Yards and Docks.

I believe, Congressman Boyle, you stated there were only approximately 155 bids on almost 200 contracts. Well now, this column on the left is the number of bids received on each contract. They were, for instance, down the column, the 3 items, say 16 bids were received on each contract for 16 contracts or a total of 256 bids received on 16 contracts. That is the only point I wanted to clear up, sir.

Mr. BOYLE. Thank you, sir.

General WILSON. I think the same thing applies to the others, but I am not able to state that officially, but my reading of this here now, it could be Army projects, 1 contract with 2 bids, 3 contracts with 3 bids, 6 contracts with 4 bids, and so on.

I believe the interpretation you were placing on it is not the interpretation that was intended.

Mr. BOYLE. You will produce a table now covering all of the awards and all of the bids.

General WILSON. Will a representative table be satisfactory.

Mr. BOYLE. The best and most complete that is consistent with time and cost.

General WILSON. All right, sir; we can do that.

DEPARTMENT OF THE ARMY,
OFFICE OF THE SECRETARY OF THE ARMY,
Washington, D. C., April 10, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives.

DEAR MR. CHAIRMAN: During the recent hearings on H. R. 3241, a bill to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes, before Subcommittee No. 2 of the Committee on the Judiciary Representative Boyle requested certain information with respect to the number of bids received on construction contracts. Representative Boyle requested that the information given the committee during its consideration of S. 1644 during the 84th Congress be brought into current status.

Attached are two enclosures reflecting the number of bids received on construction contracts during November and December 1956 and January 1957. Enclosure 1 contains the information with regard to the Departments of the Army and the Air Force. Enclosure 2 reflects the information with regard to the Department of the Navy.

I hope that the information furnished herewith will be of assistance to you.

Sincerely,

ALBERT BARKIN,
Colonel, GS, Office of the Chief of Legislative Liaison.

Summary of number of bids received for 3 months from Nov. 1, 1956, through Jan. 31, 1957, Corps of Engineers supervision

Army projects			Air Force projects		
Number of bids each contract	Number of contracts	Total number of bids	Number of bids each contract	Number of contracts	Total number of bids
1	2	2	2	10	20
2	3	6	3	34	102
3	17	51	4	18	72
4	16	64	5	21	105
5	19	95	6	28	168
6	6	36	7	23	161
7	8	56	8	18	144
8	10	80	9	16	144
9	11	99	10	8	80
10	5	50	11	3	33
11	2	22	12	10	120
12	4	48	13	2	26
13	5	65	14	2	28
14	4	56	16	1	16
15	1	15			
16	3	48	Total	194	1,219
Total	116	793			

November and December 1956 and January 1957

Number of bidders each contract	Number of contracts awarded $2,000 to $100,000	Number of bids received on contracts awarded $2,000 to $100,000	Number of bidders each contract	Number of contracts awarded in excess $100,000	Number of bids received on contracts excess of $100,000	Total number of contracts awarded	Total number of bids received
1	23	23	1	4	4	27	27
2	50	100	2	7	14	57	114
3	88	264	3	12	36	100	300
4	91	364	4	16	64	107	428
5	73	365	5	7	35	80	400
6	58	348	6	7	42	65	390
7	43	301	7	6	42	49	343
8	32	256	8	11	88	43	344
9	30	270	9	9	81	39	351
10	13	130	10	4	40	17	170
11	9	99	11	4	44	13	143
12	8	96	12	3	36	11	132
13	4	52	13	3	39	7	91
14	3	42	14	0	0	3	42
15	1	15	15	2	30	3	45
16	1	16	16	1	16	2	32
17	1	17	17	0	0	1	17
20	1	20	20	0	0	1	20
Total	529	2,778		96	611	625	3,389

Mr. BOYLE. You stated in your prepared statement on page 2, beginning about line 4——

General WILSON. Yes.

Mr. BOYLE. Your statement seems to indicate there ought to be legislation not only referring to specialty contractors, but to all the subcontractors as well?

General WILSON. Well, it is intended to indicate if there is sufficient evil to have legislation for one there would appear to be reason for it to ultimately be extended to all of them, which would then make it almost impossible to get competitive bidding, in our opinion.

Mr. BOYLE. Now, referring to page 2, and those bills you talked about as having been introduced in the 72d Congress.

General WILSON. Yes.

Mr. BOYLE. The amount of specialty work in a project at that time as compared with the amount of specialty work that is involved in projects now, is there a comparison on that?

General WILSON. There is no comparison.

There is a great deal more specialty work now than there was at that time.

Mr. BOYLE. Although you do not have to reconcile any statement in the record there is testimony that on some projects, the specialty work will total up to 40 percent, and even in specialized projects it could go to 75 or 80 percent.

General WILSON. That is correct.

Mr. BOYLE. Could this change in circumstances be a very valid reason for Congress legislating in that field today.

General WILSON. Yes.

My only point in raising that was primarily to point out that it is not just the specialty subcontractors who, from time to time have been united or would, perhaps, want protection, but even extended as far back as the 72d Congress to include subcontractors of all kinds, material man, and supply men.

I was merely reinforcing my previous statement to the effect that this same policy could well be extended beyond, if it was once established.

Mr. LANE. Are there any further questions? If not, General Wilson, we thank you very much for your attendance here this morning.

I will call the next witness, Capt. James Benson, of the Bureau of Yards and Docks.

TESTIMONY OF CAPT. JAMES BENSON, UNITED STATES NAVY, BUREAU OF YARDS AND DOCKS

Captain BENSON. Mr. Chairman, I have no prepared statement to make, but I would like to make a verbal statement, a very short one.

Mr. LANE. Very well, Captain.

I know you came here in company with General Wilson, and with Mr. Seltzer, from the Legal Division of the Corps of Engineers, but if there is a short statement you would like to make I would be glad to have the benefit of it.

Captain BENSON. I would only like to indicate that the Bureau of Yards and Docks and the Department of the Navy are strongly in support of the statement made by General Wilson today, and the statement made by General Tulley last year, a witness for the Department of Defense.

I would like to make one further statement, and that is that we do not feel that this legislation, as written, will actually accomplish a purpose for the reasons indicated:

No. 1, the act contains an escape clause—maybe you could call it something else—whereby the contractor can substitute a subcontractor's name within 5 days without any reason whatsoever. So, it does not block him from receiving a bid from what we might call an ethical contractor who is protesting this practice; that has gone to the trouble

to get up a legitimate bid, shall we say, of $50,000 or $60,000, and within a 5-day period after the opening of the bid, if we are going to consider the prime contractor's resort to unethical practices, all he has to do is still show that bid to any subcontractor of his acquaintance and say "This subcontractor submitted a bid for $50,000 or $60,000 and you can get it for $40,000," and he gives it to this other fellow by this so-called chiseling act.

We have not closed the door—it leaves it wide open, and further than that, after the contractor has gone beyond the 5 days, he can still come through with another bid by showing some savings, however minutely, stating he could not give this to a friend—he does not have to tell us he is a friend—and save $100 or $1,000 on the contract, so the officer in charge is put in the position of "Well, if it is going to save the Government some money, we accept it."

We have not defeated, as I see it, the unfair practice that that bill is aimed at.

Mr. BOYLE. Captain, do you want to take the position that the elimination of that 5-day ruling might assist in eliminating the very objections the bill seeks to remedy.

Captain BENSON. No, sir. I think if the bill is going to be, there should be an escape clause, but it does not serve the purpose that it was put there for.

Mr. BOYLE. Did you adopt earlier the testimony of General Tulley?

Captain BENSON. Yes, sir.

Mr. BOYLE. He said to me on the occasion of the last hearing, he said he thought this bill would firm up the contracts.

Do you feel this legislation would firm up the bidding?

Captain BENSON. I think it will, sir.

Mr. FORRESTER. Captain, as I understand you, you said during the 5-day period the prime contractor could change his subcontractors as he wanted to.

Captain BENSON. Yes; as he sees fit, and with no reason whatsoever.

Mr. FORRESTER. Then, you say, there is another field, when he wants to help a friend, that the friend can reduce the price $100?

Captain BENSON. Yes. If it is a saving to the Government, he can cut the new contract. It doesn't say how much savings it will be. It says "if he shows a saving to the Government."

Mr. FORRESTER. Captain, very candidly, you have opened up some points I really had not thought of, and, Mr. Chairman, I do not want to prolong any hearing, but some time I would like to hear some evidence from the other side on this point, which the Captain has raised.

Mr. LANE. Yes. Mr. Donohue.

Mr. DONOHUE. There is one thing I would like to get cleared in my own mind. You say, Captain, that one of the strong objections you have to the bill is this sort of escape clause?

Captain BENSON. No, sir; I said I strongly support the Department of the Army's views on the matter, and the examples which they have put forth, and the hypothetical cases which were brought out.

I just pointed out, in addition to that that this does not seem to close the door, and it leaves it wide open.

Mr. DONOHUE. In other words, because of the language incorporated in the bill, you would be against it; is that correct?

Captain BENSON. No, sir; I could not say that because I do not know the language that would be incorporated in the bill.

Mr. DONOHUE. I mean, any bill that would have for its objective the elimination of bid-shopping; would you be against it?

Captain BENSON. No.

Mr. DONOHUE. What was your position, say a year ago, when a similar bill without that escape clause in it was considered.

Captain BENSON. I was not at the hearing. I did not see the other bill. I read the testimony that was given last year on this bill. I read the present bill.

Mr. DONOHUE. Wasn't General Tulley's position in opposition to it last year?

Captain BENSON. Yes, sir.

Mr. DONOHUE. And you supported his position?

Captain BENSON. Yes, sir.

Mr. DONOHUE. In other words, if you were called upon to testify, you would be opposed?

Captain BENSON. Yes; and I would support each statement, as I recall it.

Mr. DONOHUE. Can you help the committee out by offering any suggestions in regard to this bill which would make it acceptable.

Captain BENSON. No.

Mr. DONOHUE. As to the language that we should incorporate in the bill that would eliminate these objections?

Captain BENSON. No, sir; I cannot.

Mr. BOYLE. For the purpose of the record, you are interested in creating competition amongst the general contractors, as far as their bids on Government work is concerned?

Captain BENSON. Oh, yes; very definitely.

Mr. BOYLE. And the only thing that can follow from competition in bidding is lower cost to the Government?

Captain BENSON. That is right, sir.

Mr. BURDICK. You have read and digested the purpose of this bill?

Captain BENSON. Yes, sir.

Mr. BURDICK. And you have no objection to that purpose, have you?

Captain BENSON. Oh, no.

Mr. BURDICK. But you also feel, under the language used in the construction of this bill, that it will not accomplish that purpose?

Captain BENSON. Yes; that is my opinion.

Mr. LANE. Are there any further questions of Captain Benson? If not, thank you very much for appearing, Captain Benson.

The next witness to testify is Mr. Fred S. Poorman, Deputy Commissioner, Public Buildings Service, General Services Administration.

Mr. Poorman, before you testify, let me state again, this might be a little unfair to you, but we are going to have to adjourn at a quarter to 12, because of the fact we have a busy schedule in the House today, and we must be there. If we do not finish with your testimony within 15 minutes—and I know we will not—I wonder if you would perhaps return tomorrow, so we will have an ample opportunity to hear from the General Services Administration?

TESTIMONY OF FRED S. POORMAN, DEPUTY COMMISSIONER, PUBLIC BUILDINGS SERVICE, GENERAL SERVICES ADMINISTRATION

Mr. POORMAN. Yes, but my hope is that I will finish within 15 minutes.

Gentlemen, as stated last year in connection with the hearing on similar legislation, the GSA has had a rather limited program over the past 10 to 15 years, due to the various international emergencies that have held the nonmilitary construction to the absolute minimum.

We do have currently a substantial program on construction. In addition, we have initiated a rather extensive repair, improvement, and air-conditioning program applicable to some 4,000 Government-owned buildings throughout the United States.

The buildings have had an irreducible minimum of repairs since 1939, and as a matter of good business, it is essential that we up-date them.

We anticipate that the program will cover a period of 5 to 7 years, and the Bureau of the Budget and congressional committees, have been very responsive to the need for this work.

Our position is as outlined in our report, dated May 19, and we concur substantially in the position as outlined by General Wilson.

We think it might be of interest to call your attention to certain circumstances that may be peculiar to our problems.

We presently, under BOB policy prepare our estimates of cost as of the date the estimates are prepared; in other words, the Government does not anticipate a price spiral or depression.

In the present rising-costs markets we are continually fighting to keep costs within the appropriation.

Now obviously one of our principal functions is to design facilities as economically and efficiently as possible.

However, because of this peculiarity, we frequently use alternates in order to insure getting a bid within the appropriated amount, but having either added or deducted alternates to insure eliminating only the less essential elements, if it is necessary to meet a cost.

In line with the comments of General Wilson, we are suggesting a minor modification of one of the suggestions of the Department of Defense.

As General Wilson mentioned, we would propose that our two legal staffs agree on the wording submitted to the committee.

Our Mr. Fretz, from our General Counsel's office, may talk on that more fully momentarily.

The other program of ours is the repair, improvement, and equipment program.

Up until last year our funds had been quite limited for that purpose. We had $55 million during the fiscal year of 1957, and the evidence is that it will be somewhat greater in the succeeding years to come. The contracts are generally quite small. The majority of them—the larger ones usually contain specialty items in small amounts, and I have a few examples here that I might touch on.

Here is a $221,000 job of which the major items are the remodeling and improvement of unfinished space and that amount is $156,000.

We have along with it quite a lot of work that is incidental to the building, like electrical work, $500; heating, $900; plumbing, $200; and so forth.

I have a number of those here and the pattern runs substantially the same.

We have one major item to perform, but we have thrown a lot of miscellaneous items in with it, as a matter of convenience in contracting, administration, and convenience to the occupants of the building, so that we will not have it torn up by a series of small contracts over a period of time.

By virtue of that situation, we would like the consideration of the committee, to extending the exemptions from $100,000 to $200,000, and in addition, waiving the requirement to list the subcontractors where the cost of the specialty subcontract has an estimated value of less than $25,000.

This is purely because of the unique character of this substantial repair program of ours that we ask this consideration.

Mr. POFF. May I interrupt you a moment? Do you mean a subcontract for less than $25,000?

Mr. POORMAN. Yes.

Mr. FORRESTER. Do you mean to say a $25,000 subcontract would be the exemption in all the contracts or just on the remodeling contracts?

Mr. POORMAN. We would say "all." We would like to apply it to all, as a matter of principle, but it would mostly affect the small repair contract work.

I think, gentlemen, other than some specific comments, or if counsel would like to make reference to some details of the legislation, that is all I have to say, Mr. Chairman.

Mr. Fretz would, at this time, like to make some comments in regard to the legislation on this bill. I believe he can wind that up within 5 minutes.

Mr. LANE. I believe you will have to come back, Mr. Poorman, because it is almost compulsory we quit at a quarter of 12, and I know the members of the committee would like to get some information from General Services Administration, because that is a little different thing than what we have already had from the Secretary of Defense.

I think, perhaps,, it might be better if we suspend here until tomorrow morning, and you can bring your counsel along.

The room will be announced at a later time, that is, as to the place of holding the hearing.

General Wilson, we would like your statement, as well as the statement from the Department, placed in the record, and if there is no objection we will have it put in the record.

General WILSON. I have no objection.

Mr. LANE. Although you did not read that it will be made a part of the record, together with the Defense report.

The report from General Services Administration will also become a part of the record, together with the report from the Comptroller General of the United States which is here before us, dated February 27, 1957, together with the report of the Department of the Interior, which will be made a part of the record.

(The material referred to follows:)

STATEMENT OF MAJ. GEN. W. K. WILSON, DEPUTY CHIEF OF ENGINEERS FOR CONSTRUCTION

The Department of Defense has given careful consideration to H. R. 3241, H. R. 3339, H. R. 3340, and H. R. 3810, identical bills, which are now under consideration by your subcommittee. The views of the Department of Defense with respect to these bills are stated in a report from the Department of the Army, in behalf of the Department of Defense, to the chairman of the House Committee on the Judiciary and I am here to explain the position of the Department of Defense in more detail.

The Department of Defense is much concerned. This type of legislation represents a departure from an established practice in policy and procedure which over the years has proved practicable. In the light of the matters which I will point out, the Department of Defense is opposed to the enactment of such proposed legislation.

In fulfilling its military responsibilities, the Department of Defense carries on a large and varied construction program. In addition, the Department of Defense on request renders construction services to other Government agencies.

The bills area substantial revision of S. 1644, 84th Congress, which passed the Senate on July 27, 1955, but failed to pass the House of Representatives. It can be added that the bills are a more simplified version of all previous bills which were introduced in the 82d, 83d, and 84th Congresses. The present bills remove some and lessen other objectionable features related to the administrative problems involved, and with the changes which are recommended in our report to the House Judiciary Committee, there would be a further lessening of some of the administrative problems involved. I shall go into this in more detail later on when I come to the specific changes recommended.

But I want to say now, speaking for the Department of Defense, that apart from the changes we have recommended, and any additional changes that might be made to facilitate the administration of the proposed legislation, certain fundamental objections would remain. These objections strike at the very roots of the bills and pervade the proposed legislation as an entirety. They may be summarized thus: The bills are designed to protect only subcontractors engaged in mechanical specialty work, whereas bid shopping in the construction industry admittedly exists also with respect to nonmechanical specialty groups and reaches the sub-subcontractors furnishing work and materials to subcontractors. If bid shopping is considered by the elements of the construction industry as undesirable or unethical, the matter should be one which calls for action within the industry itself rather than resort to legislative action. Enactment of the proposed legislation would project the Government into the operations of a preferred group of private industry without affording protection to others in the same industry who are similarly affected. This would undoubtedly result in demands for similar legislation by other subcontractors participating in the performance of Government construction contracts. If any particular class of subcontractors is entitled to the special treatment the proposed legislation would require, no sound reason appears for not according the same treatment to all classes of construction and supply contractors. In such event, however, administration of Government contracts would become practically impossible.

Let us look into the record of bid shopping bills and see how real is the threat that enactment of any of the instant bills would lead to an expansion of bid-shopping legislation to bring in all subcontractors participating in the performance of Government construction contracts.

Bills were introduced in the 72d Congress (H. R. 4680 and H. R. 9921; S. 4081 and S. 1639) requiring contractors on public building projects to name their subcontractors, material men, and supply men. The hearings on H. R. 4680, held in April 1932, and the hearings on S. 4081, held in January 1933, contain statements (in addition to those of representatives of organizations related to mechanical specialty subcontractors) of representatives of various organizations such as the National Association of Ornamental Iron, Bronze & Wire Manufacturers, Structural Slate Association, Allied Building Material Industries, International Cut Stone Contractors' and Quarrymen's Association, Contracting Plasterers' International Association, and Common Brick Manufacturers Association of America, all complaining that the practice of bid shopping affected the members of their organizations and requesting favorable action on the bills. Although there was a favorable House Report of H. R. 9921 (H. Rept. No. 1272), there was no action by the 72d Congress on these bills.

In the 75th Congress, H. R. 146 requiring contractors on public building projects to name their subcontractors, material men, and supply men passed both the House and the Senate, but was vetoed by President Roosevelt on June 25, 1938.

In the course of his veto message, President Roosevelt said:

"This bill apparently is intended to prevent so-called 'bid shopping' practices of general contractors which appear to be prevalent in connection with public building contracts of the Federal Government * * *.

"While I recognize the evils of 'bid shopping' and favor any provision which will promote the prompt payment of the obligations of contractors for labor and materials, it is believed that this bill will have no tendency to accomplish either of its objects and will merely create a multitude of administrative difficulties * * *."

(The full text of this veto message is contained in vol. 83, pt. 8, p. 9707, 75th Cong., 3d sess.)

I am citing these previous bills merely for the purpose of showing that bid shopping practices of general contractors affects all subcontractors, material men, and supply men participating in the performance of Government construction contracts, and that all these subcontractors want remedial legislation.

Sub-subcontractors are apparently also interested in bills to prevent bid shopping. S. 848, 83d Congress, and similar bills, with respect to which there was a joint hearing before the subcommittees of the Committees on the Judiciary in April 1953 included sub-subcontractors performing mechanical specialty work. These sub-subcontractors for some reason were not included in the bid shopping bills introduced in the 84th and 85th Congresses.

The very bills now before your subcommittee declare at the outset (and I am quoting), "that such procedures should be so established as to eliminate the unfair trade practice of bid shopping by general contractors *or subcontractors*." [Italics supplied.] But the text of the proposed legislation is designed to protect only subcontractors engaged in mechanical specialty work. If the practice of bid shopping by general contractors and subcontractors is an unfair trade practice as the instant bills specifically declare, it is equally an unfair trade practice if followed by nonmechanical specialty subcontractors and other subcontractors having to do with Government construction. It is known that bid shopping goes on in all these groups. It seems only reasonable to assume that subcontractors other than mechanical specialty subcontractors are waiting to see what the Congress is going to do about bid shopping, and that if the door is opened, all such subcontractors will demand to be let in, pointing to the declaration by the Congress that bid shopping by both general contractors and subcontractors is an unfair trade practice, and that to shut any particular class of subcontractors out is to discriminate against such subcontractors. If this should come to pass and a broad bid-shopping law results, we would be confronted with administrative difficulties which would render the administration of Government construction contracts practically impossible.

It is felt that the proposed legislation is unnecessary and not advantageous to the Government. It provides further governmental controls over private industry, and would involve additional administrative costs.

It is again pointed out that the proposed legislation, if enacted, would be a departure from a long-established practice in policy and procedure in the letting of construction contracts which has proved practicable. If the Congress is disposed, however, to depart from such established practice and enact any of the instant bills, it is recommended as stated in the report of the Department of the Army, in behalf of the Department of Defense, to the chairman of the House Committee on the Judiciary that certain changes be made in the proposed legislation, which to some extent would lessen the objectionable features of the bill. These changes are specifically identified with respect to H. R. 3241, this being 1 of the 4 identical bills and was selected merely for convenience of single identification of the text of the proposed legislation. While the four bills are identical, the pages and lines are not always alike as to location of the text. I will therefore hereafter refer to the four bills as H. R. 3241 or the bill.

The reasons for these recommended changes are that there would be clarification of some of the provisions of the bill, including those provisions which appear to be in conflict with other provisions, and correction of provisions which appear to be in conflict with the spirit of the competitive bidding system; there would be a substantial lessening, if not an actual elimination, of most of the administrative problems involved; the general contractor would be afforded an opportunity to perform a particular major category of mechanical specialty work himself under circumstances not now provided in the bill; and the application

of the proposed legislation would be confined to construction contracts awarded as a result of competitive bidding, which would require formal advertising pursuant to the procurement act and regulation.

In confining the coverage of the proposed legislation to contracts awarded as a result of competitive bidding, problems peculiar to negotiated contracts would be eliminated. It is not certain from a reading of the bills that such limitation was not as a matter of fact intended. Section 2 (f) refers "to a lump-sum construction contract to be awarded on a competitive bid basis," whereas section 3 (7) defines the term "lump-sum construction contract" as "a construction contract, whether awarded after bid or negotiated, under which the price is fixed or to be fixed by any method other than the cost-plus-a-fixed-fee method." While it is true that there is an element of competition in some negotiated contracts in that proposals are invited from a select group of general contractors, after the opening of such proposals negotiations are conducted with the general contractor who submitted the lowest proposal, assuming he is responsive. During such negotiations there may be changes in the plans and specificatoins. These negotiations may continue for some time until a contract is finalized. It is necessary that the general contractor have latitude in dealing with his subcontractors until he knows just what the plans and specifications will call for and the price at which he will bind himself to perform the contract. The bill as written, in effect, precludes bid shopping after 5 days following expiration of the date of the opening of the bids. This obviously would not be realistic with respect to negotiated contracts where negotiations may continue for some time after the opening of the proposals. Language throughout the bill applicable to negotiated contracts was accordingly eliminated.

The statement in section 2 (b) "that he (the general contractor) received no definite, complete and responsive bid" was changed to read "that he (the general contractor) received no acceptable bid from any contractor for such category." This change will avoid diverse interpretation and will leave it to the general contractor to determine whether the bid of the subcontractor is acceptable.

An additional proviso was added to section 2 (b) reading as follows:

"*And provided further, however,* That if the general contractor shall fail or refuse to comply with the requirements of the immediate preceding proviso, the executive agency shall not be precluded from awarding the construction contract to the general contractor nor shall the general contractor be relieved of any responsibility for the performance of the construction contract in the event the contract is awarded to him."

The provisos now contained in section 2 (b) would appear to be in conflict with the spirit of the competitive bid system. To illustrate, they would permit a general contractor a choice after he has obtained knowledge of other bids when the bids are opened (1) of naming a subcontractor within the 5-day period after the date of opening of bids and thus letting his bid stand, or (ii) of not naming a subcontractor within such 5-day period and thus having his bid disqualified. Even if the general contractor received an acceptable bid from his subcontractor during the 5-day period after bid opening and he decided that he submitted an improvident bid to the contracting executive agency, he could refuse to name the subcontractor. Since he failed to name a subcontractor, apparently no award could be made to him. It is believed that the added proviso would remedy the situation.

Changes were also made in the bill to permit the general contractor to perform a particular major category of work himself under circumstances not now provided in the bill. For example, where he has the right to engage a substitute or different subcontractor, such substitute or different subcontractor could be the general contractor himself. The need for this is exemplified in a case where a subcontractor fails or refuses to complete the work, and the general contractor is unable to get an acceptable subcontractor to complete the work, or for reasons of economy the general contractor desires to complete the work himself.

The words "to a point 5 feet outside the building line" were added to the meaning of the term "mechanical specialty work" in section 3 (3) since building mechanical specialty work does not reach beyond such line.

A new section (sec. 5) was added, making the proposed legislation effective 6 months after the date of enactment to allow time for change in regulations and forms required to carry out the provisions of the new legislation.

The words "or by any other person" were added at the end of section 4 (c) so as to include third persons such as creditors of the general contractor or subcontractor from instituting actions against the United States because of any requirements which may be imposed by the executive agency under the provisions of the bill.

Other changes made are of a technical or clarifying nature.

Even if all the changes as recommended are made, we would still have some problems in the event the general contractor failed to comply with some of the requirements imposed, since the proposed legislation does not expressly provide the actions which may be taken by the Government in such event.

Mr. LANE. We will at this time adjourn until 10 o'clock tomorrow morning.

(Whereupon at 11:45 a. m., the committee recessed until 10 a. m. on Thursday, March 28, 1957.)

FEDERAL CONSTRUCTION CONTRACTS

THURSDAY, MARCH 28, 1957

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 2 OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C.

The subcommittee met, pursuant to call, at 10 a. m., in room 346, Old House Office Building, Hon. Thomas J. Lane (chairman of the subcommittee) presiding.

Present: Representatives Lane, Donohue, Boyle, and Poff.

Also present: Cyril F. Brickfield, counsel.

Mr. LANE. The committee will kindly come to order.

We will continue our hearings today on the same five bills that we have been receiving testimony on. That is H. R. 3339, H. R. 3241, H. R. 3340, H. R. 3810, and H. R. 4313, to prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes, and other related bills.

At the time we adjourned on yesterday, the witness testifying at that time was Mr. Fred S. Poorman, Deputy Commissioner of Public Buildings Service, General Services Administration.

Mr. Poorman, as I recall, you almost completed your testimony. Did you have something further to offer now?

FURTHER TESTIMONY OF FRED S. POORMAN, DEPUTY COMMISSIONER, PUBLIC BUILDINGS SERVICE, ACCOMPANIED BY JOHN W. FRETZ, OFFICE OF GENERAL COUNSEL, GENERAL SERVICES ADMINISTRATION

Mr. POORMAN. Only, sir, that our Counsel had a couple of comments on the details of the legislation. We are willing to answer any questions that the committee might have.

Mr. LANE. Counsel, will you identify yourself for the record?

Mr. FRETZ. John W. Fretz, Chief Counsel, Design and Construction Branch, Office of General Counsel, General Services Administration.

I would like to address my remarks to suggestions we made with respect to some amendments to the act, and particularly because of the fact that I believe, although the sponsors of the bill apparently don't object to them, they don't feel they are necessary. I thought I might, for the purposes of the record, elaborate a little bit on them.

Our first recommendation is contained at the bottom of the second page of our report, in which we suggested a revision of the last proviso, so that it would now read:

Provided further, That, in the event the apparent low bidder has submitted such a statement in lieu of listing the name of a contractor, he shall, within 5 days

(Saturdays, Sundays, and Federal holidays excepted) after the date of the opening of bids, notify the executive agency in writing of the name of the contractor with whom he will contract for the performance of such category, or that he will himself perform such category. Such notification shall be made by any other bidder within 5 days (Saturdays, Sundays, and holidays excepted) after the date of receipt of a request therefor by the executive agency.

The reason for the suggested amendment as described in our report is that it would relieve all unaffected bidders of a needless burden.

What we had in mind was a situation where there are 15 or 20 bidders, with 4 of the bidders naming all of the subcontractors as required by the first part of section 2 (b); the balance of the bidders were not in a position at the time they submitted their bid to name all of the subcontractors, so they submitted the statement that is required by the first proviso. The language of the bill further requires that those that have submitted such a statement must, within 5 days after the opening of bids, notify the executive agency of the name of the contractor with whom he will contract for the performance of such category.

We felt when the bids are opened and assuming everything else is equal, that there will be a low bidder to whom it is apparent the award will probably be made. Therefore, it seemed it was just an unnecessary burden on the other contractors who presumably would not get the award to go to the trouble of sending in these names and the action that would have to be taken by the Government in connection therewith. It would be an unnecessary step.

If it developed later that the apparent low bidder was not in fact the low bidder to whom the award was to be made, then in such event the revised proviso would require that upon notification the second apparent low bidder would provide the information. That is all that is intended by our recommendation. In other words, to eliminate some more unnecessary paperwork.

Mr. LANE. Counsel, you say that the proponents of this measure have no objections to this amendment and feel it is unnecessary?

Mr. FRETZ. That is right.

Mr. LANE. Due to the workings of your agency and your organization, you feel that something like this amendment would help you in your own department?

Mr. FRETZ. I think it would help us and all the other Government agencies to the extent that it would just avoid some further needless paperwork on the part of both parties.

Mr. LANE. Thank you.

Mr. FRETZ. Since we are now talking about section 2 (b) in the testimony yesterday of General Wilson and Mr. Poorman, General Wilson on the question of responsive bids and the area for errors in bids, and Mr. Poorman on the question of alternates in bids that there might be a chance for a multiplicity of errors, the Department of Defense had suggested another proviso to be added to the end of this section. Both General Wilson and Mr. Poorman testified that we had under consideration a further revision of that proviso to broaden its scope. We had tried to complete our revision last night and this morning, but were unable to do so. However, we will get it to the committee as soon as we can.

Mr. LANE. If you will, please.

Mr. FRETZ. Yes, sir.

Mr. LANE. Do you want to go ahead with the next amendment?

Mr. FRETZ. Yes, sir. The next amendment concerns 2 (g). That is the subsection which sets forth the several grounds which serve as a basis whereby the general contractor may engage a substitute subcontractor after the award of the lump-sum construction contract.

Our first proposed amendment was addressed to page 5, line 8, wherein we suggested the placing of a comma after the word "therefore" and insert after the comma the words—

the general contractor at any time may engage a substitute or different contractor to perform such work or he may himself perform such work.

The reason for this was to make the language in line 8 consistent with that contained in lines 12 and 13. Our second suggestion was that in the same section on page 5, line 12, strike out the words "at any time may" and substitute the words "shall, if so requested by the executive agency."

Lines 9 through 12 cover situations where the contractors are ineligible because of statutory reasons or by virtue of some Government rulings, and we felt in such cases a substitution should not be at the general contractor's discretion, but rather that it should be mandatory upon the request of the executive agency.

Mr. LANE. Are there any questions? If not, I thank you very, very much for your testimony.

Mr. FRETZ. Sir, may I just add one word at this time? In the Department of Defense report, they recommend the addition of a new section 5, which would make the effective date of the act 6 months from the date of enactment. Frankly, that was made at our suggestion under the Federal Property and Administrative Services Act of 1949. The General ServicesAdministration has the responsibility for prescribing standard forms of contracts for governmentwide use. There will undoubtedly be a number of changes that will have to be made in the bidding documents and perhaps in the language of some of the clauses.

Whenever we make revisions, they are accomplished on a cooperative basis among the Government agencies and with the cooperation of industry. In this case, it would probably be the sponsors of the bill and the Associated General Contractors. Those things take a little bit of time. Six months actually is a bare minimum. We prefer probably a year because it is just not easy to make all those changes and have everybody satisfied. It is better to have those changes made before the documents go out. If we get objections, it saves time. We can eliminate those if we have everybody in agreement before we promulgate the new forms.

Mr. LANE. Do you care to comment about raising the sum from $100,000 to $200,000?

Mr. FRETZ. Yes, sir. As Mr. Poorman testified yesterday, it has application particularly to our repair program. We feel it would be desirable to raise that floor from the $100,000 to $200,000. I think there were two other suggestions, one about the possibility of a percentage basis on subcontracts and the other subcontracts in excess of $25,000. Perhaps the easiest amendment might well be the raising of the floor from $100,000 to $200,000.

Mr. LANE. Thank you. Are there any further questions? If there are not, we thank you.

You stated Mr. Glassie would like to say a word or two this morning.

Mr. GLASSIE. Yes, Mr. Chairman, I would like to have a few minutes, if I may.

Mr. LANE. If there is no objection, your letter to the committee chairman with copies to each one of the members of the subcommittee, together with the enclosures, will also become a part of the record at this point.

Mr. GLASSIE. Thank you. We would like to have them part of the record.

(The information follows:)

WEAVER & GLASSIE,
Washington, D. C., March 26, 1957.

Hon. THOMAS J. LANE,
Chairman, House Judiciary Subcommittee No. 2
House Office Building, Washington 25, D. C.

DEAR MR. LANE: In accordance with your permission, I am enclosing the comments of the Council of Mechanical Specialty Contracting Industries, Inc., on behalf of all mechanical specialty contractors, on (1) the 10 amendments of the Federal construction contract bill suggested by the Associated General Contractors of America, Inc., (2) the 13 amendments suggested by the Department of Defense, and (3) the 2 amendments suggested by the General Services, Administration.

Sincerely,

HENRY H. GLASSIE.

COMMENTS BY THE COUNCIL OF MECHANICAL SPECIALTY CONTRACTING INDUSTRIES, INC., ON SUGGESTED AMENDMENTS OF THE GENERAL SERVICES ADMINISTRATION TO THE FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT AS SET FORTH IN ITS REPORT DATED MARCH 19, 1957

While we do not believe they are necessary, we see no objection to the two additional amendments suggested by the General Services Administration Nos. (1) and (2) and contained on pages 2 and 3 of its letter of March 19, 1957.

COMMENTS BY THE COUNCIL OF MECHANICAL SPECIALTY CONTRACTING INDUSTRIES, INC., ON 13 SUGGESTED AMENDMENTS TO THE FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT SUBMITTED BY THE DEPARTMENT OF DEFENSE

The following are the considered comments of the Council of Mechanical Specialty Contracting Industries, Inc., speaking on behalf of the mechanical specialty contracting industry, upon the 13 suggested amendments (or groups of amendments) to the above bill contained in the report of the Department of Defense dated March 19, 1957.

(NOTE.—The Defense Department report states that if these amendments were adopted "there would be a substantial lessening, if not an actual elimination, of most of the administrative problems involved * * *; and the application of the proposed legislation would be confined to construction contracts awarded as a result of competitive bidding," p. 4.)

(For convenience in reading the following comments, we are appending a copy of H. R. 3339 with the suggested amendments of the Department of Defense shown thereon and numbered in accordance with the following comments.)

(1) We do not agree with suggested amendment No. (1), the effect of which would be to eliminate lump-sum negotiated contracts from the effect of the bill. General contractors have not asked for such elimination. The same reasons exist for the legislation in respect to negotiated lump-sum contracts (normally awarded after bid pursuant to invitation) as with respect to lump-sum contracts awarded upon competitive bidding after public advertising. Indeed, the machinery of the bill is more necessary and would be simpler with respect to such negotiated contracts.

(Because the first suggested amendment involved 10 minor changes, it is shown on the attached exhibit as 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h, 1j, and 1k.)

(2) We see no objection to suggested amendment No. (2), to the substitution of the word "opening" for the word "submission," line 7, page 3.

(3) We strongly object to suggested amendment No. (3), to the substitution of the word "acceptable" for "definite, complete and responsive," lines 11 and 12, page 3. This substitution would make the required statement virtually meaningless.

(4) We see no objection to suggested amendment No. (4), to the substitution of the word "after" for the word "of," line 16, page 3, and on line 20, page 4. (Shown on exhibit as 4a and 4b.)

(5) We see no objection to the principle of suggested amendment No. (5). Because this amendment involves five small changes, it is shown on the exhibit as 5a, 5b, 5c, 5d, and 5e.)

(6) We have no objection to the principle of the proposed proviso to be added to section 2 (b) following line 19, page 3 (suggested amendment No. (6)), but believe the intent thereof might better be accomplished by the following language: "*And provided further, however*, That if a general contractor shall fail or refuse to comply with the requirements of the immediately preceding proviso, the general contractor shall not be relieved thereby of any responsibility for his bid and if the executive agency, because of such failure or refusal awards a contract to a general contractor who submitted a higher bid the general contractor who so failed or refused to comply with the requirements of the immediately preceding proviso shall be chargeable with the difference in cost."

(7) With regard to suggested amendment No. (7), relating to the first three lines of section 2 (f), our views are included in our comments to suggestion No. (4) of the Associated General Contractors of America, Inc.

(8) We object to proposed amendment No. (8) to section 2 (h), page 6. The effect of this would permit a general contractor to name a subcontractor for a particular category, and did not change within the 5-day period, after the end of such 5-day period and without ascribing any reason for change, such as the default, failure, or refusal of such subcontractor nevertheless to perform, to nevertheless perform such category himself. We believe the general contractor should be able to name himself and perform initially. We believe the general contractor should be permitted to do the work himself if he so determines within the 5-day checking period or if the named subcontractor should at any time default. We agree with the Associated General Contractors, however, that such should not be permitted under section 2 (h) because the general contractor's rights to himself perform any category of the work has amply been provided for and there is no adequate way that the Government could protect its financial interest if he changes to himself after the award and without cause, pursuant to section 2 (h).

(Because the suggested amendment has 4 parts it is shown on the exhibit as 8a, 8b, 8c, and 8d.)

(9) We object to suggested amendment numbered (9) to add the words "to a point 5 feet outside the building line" to the end of the definition of construction contract. We submit it is illogical and confusing. The work under a construction project must necessarily include whatever is within the contract itself. It may be normal industry practice for some types of construction contracts not to include any work more than 5 feet outside of the building line. If this is so, it would be automatically provided for, in that work outside of such 5-foot line would be within the terms of the contract.

(10) We do not agree with suggested amendment numbered (10) to add the word "building" before the word "mechanical," line 2, page 8. It is difficult to determine the purpose of this amendment. It would appear to be confusing. On the basis of its apparent purpose we would alternately suggest the addition of the word "construction" after the word "particular" in the first line of page 8, but we do not think this is necessary for clarity.

(11) While this is a matter within the province of the executive agency, we do not agree with suggested amendment numbered (11) that the words "for the purposes of this Act" be added in line 18, page 9. The purpose of section 4 (c) which it amends is merely to make it clear that it does not tie the hands of the Government in requiring any information it may wish in some other respect or for some other purpose and, accordingly, we don't believe the limitation "for the purposes of this Act" is appropriate.

(12) We see no objection to suggested amendment numbered (12) (12a and 12b) that the word "or" be stricken at the end of line 20, page 9, and the words "or by any other person" be added to line 22, page 9.

(13) We see no objection to the principle of suggested amendment numbered (13) for the addition of "SEC. 5. This Act shall become effective six months after the date of enactment". But we do suggest the substitution of the word "two" for the word "six."

[H. R. 3339, 85th Cong., 1st sess.]

A BILL To prescribe policy and procedure in connection with construction contracts made by executive agencies, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, (a) That this Act may be cited as the "Federal Construction Contract Procedures Act".

(b) It appears desirable, and in the best interests of the Federal Government, for the Federal Government in contracting for the construction of buildings to use the single contract system of procurement under which the general contractor is solely responsible to the Government for completion and has undivided responsibility therefor and full control and authority to coordinate and complete, but that such system should include procedures under which the subcontracts for the mechanical specialty work involved should be finalized as far as practicable prior to the submission of the prime bids [1a] ~~or proposals~~ to give the Government the full benefit of competitive subcontract prices, as well as maximum efficiency in performance, and that such procedures should be so established as to eliminate the unfair trade practice of bid shopping by general contractors or subcontractors and other unfair trade practices in connection with bidding on Federal works.

SEC. 2. (a) Each executive agency shall list in the bidding [1b] ~~or contract~~ documents, relating to each lump-sum construction contract before accepting bids [1c] ~~or proposals~~ with respect thereto, each major category of mechanical specialty work involved in the performance thereof.

(b) No executive agency shall award to or enter into a lump-sum construction contract with any general contractor unless the name of the contractor, with whom the general contractor will contract for the performance of each major category of mechanical specialty work involved which may have been listed by the contracting executive agency in the bidding [1d] ~~or contract~~ documents, has been specified by the general contractor in the bid [1e] ~~or proposal~~ upon which the contract is awarded or made: *Provided,* That with respect to any such category the general contractor may, in lieu of listing the name of such contractor, give the executive agency as part of his bid [1f] ~~or proposal~~ a written statement: (1) stating that he has made an effort to secure subbids for such category; (2) setting forth that at least five days (Saturdays, Sundays, and Federal holidays excepted) prior to the date for [2] ~~submission~~ *opening* of bids [1g] ~~or proposals~~ he requested subcontract bids from not less than three responsible subcontractors; (3) listing the names of all subcontractors from whom he has requested or received subcontract bids [1h] ~~or proposals~~; and (4) stating that he received no [3] ~~definite, complete and responsive~~ *acceptable* bid from any contractor for such category: *Provided further,* That in the event a general contractor shall submit such a statement in lieu of listing the name of a contractor, he shall, within five days (Saturdays, Sundays, and Federal holidays excepted) [4a] ~~of~~ *after* the date of the opening of the bids, notify the executive agency in writing of the name of the contractor with whom he will contract for the performance of such category [5a] *or that he will himself perform such category*: [6] *And provided further, however, That if the general contractor shall fail or refuse to comply with the requirements of the immediate preceding proviso, the executive agency shall not be precluded from awarding the construction contract to the general contractor nor shall the general contractor be relieved of any responsibility for the performance of the construction contract in the event the contract is awarded to him.*

(c) This section shall not prevent any general contractor from himself performing any major category of mechanical specialty work under a lump-sum construction contract awarded to or undertaken by him if the bid or proposal referred to in subsection (b) of this section states that the general contractor is able to and intends to perform such major category of mechanical specialty work himself.

(d) This section shall not be construed to forbid or prevent any executive agency from awarding several prime or direct lump-sum construction contracts for any one construction project, where because of special circumstances or because of the nature of the project this would be desirable.

(e) No general contractor under a lump-sum construction contract shall contract to have any major category of mechanical specialty work, involved in the performance of such construction contract as listed by the contracting execu-

tive agency in the bidding [1i] ~~or contract~~ documents, performed by any person other than the person named for the performance of such work in accordance with subsection (b) or (c) of this section, except in accordance with the provisions of subsection (f), (g) or (h) of this section.

(f) A general contractor who submits a bid with respect to a lump-sum construction contract to be awarded [7] ~~on a competitive-bid basis~~ *as a result of competitive bidding* may, at any time within five days (Saturdays, Sundays, and Federal holidays excepted) [4b] ~~of~~ *after* the date of the opening of the bids therefor, engage a substitute or different contractor from the one named in accordance with subsection (b) to perform any major category of mechanical specialty work [5b] *or the general contractor may himself perform: Provided,* That within such period he notifies the contracting executive agency in writing of the name of the substitute contractor [5c], *or that he will himself perform.*

(g) If a contractor named by the general contractor under a lump-sum construction contract in accordance with subsection (b) of this section shall refuse to enter into a contract in accordance with his subbid therefor or shall fail or refuse to post a performance bond which was to be furnished under the terms of the subbid or shall fail or refuse to perform or complete the work to be performed by him in accordance with the terms of his subcontract therefor or if such contractor shall be disqualified or be determined to be unqualified to perform such work by or under any applicable Federal statute or any Federal governmental order, ruling, or determination, the general contractor at any time may engage a substitute or different contractor to perform such work [5d] *or he may himself perform such work: Provided,* That he first notifies the contracting executive agency in writing of the name of the substitute contractor [5e], *or that he will himself perform such work.*

(h) If for any reason not specified in subsection (g) and after the expiration of the period referred to in subsection (f) and after the award of the contract to him, a general contractor under a lump-sum construction contract prefers to have any major category of mechanical specialty work on the project covered by such construction contract, as to which he has named a contractor under subsection (b) hereof, performed by a contractor other than the one named in accordance with said subsection (b) the general contractor may engage such substitute contractor [8a] *or he may himself perform such work* if prior to such change (1) the general contractor submits to the contracting executive agency in writing the name of the substitute contractor [8b] *or notifies the contracting agency in writing that he will himself perform such work* and such information as the contracting executive agency may request as to any change in cost to the general contractor involved in the proposed change in contractors [8c] *or if he performs the work himself;* and (2) the total contract price to the satisfaction of the contracting executive agency is adjusted by the net difference in cost in the event such substitution results in a lower cost to the general contractor [8d], *or if he performs the work himself.*

(i) This Act shall not apply to the following proposed construction contracts:

(1) Proposed contracts to be performed outside the continental limits of the United States which limits shall be deemed to include Alaska.

(2) Proposed contracts which are estimated by the contracting executive agency to involve less than $100,000.

(3) Any proposed contract with specific reference to which a chief officer responsible for procurement of the executive agency which is to award the contract determines that the procedure prescribed herein would result in undue delay and that the public exigency or military necessity will not admit of such delay.

SEC. 3. For the purposes of this Act—

(1) The term "executive agency" means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(2) The term "construction contract" means any contract entered into by any executive agency for the erection, repair, moving, remodeling, modification, or alteration of any building or structure upon real estate intended for shelter or comfort, or for production, processing, or travel, including without being limited to, buildings, bridges and tunnels but not including highways, aqueducts, reservoirs, dams, irrigation and regional water supply projects, flood control projects, water power development projects, jetties and breakwaters or the buildings or structures incident to or included in the contract for such excluded projects [9] *to a point five feet outside the building line.*

(3) The term "mechanical specialty work" in connection with a construction contract means all plumbing, heating, piping, air conditioning, refrigerating, ventilating, and electrical work, including but not being limited to the furnishing

and installation of sewer, drainage and water supply piping and plumbing, heating, piping, air conditioning, refrigerating, ventilating and electrical materials, equipment and fixtures.

(4) The term "major category of mechanical specialty work involved" means, with respect to a particular project, those general categories of [10] *building* mechanical specialty work for which a general contractor normally would let a direct subcontract in view of the type of project and the geographic area involved.

(5) The term "general contractor" means a person having a direct contractual relationship with an executive agency for the performance of a construction contract.

(6) The term "person" means an individual, corporation, partnership, association, or other organized group of persons. All references to contractor or general contractor shall include individuals, corporations, partnerships, associations, or other organized group of persons who are contractors or general contractors.

(7) The term "lump-sum construction contract" means a construction contract, [1j] ~~whether~~ awarded ~~after bid or negotiated, under which the price is fixed or to be fixed by any method other than the cost-plus-a-fixed-fee method.~~ *as a result of competitive bidding.*

SEC. 4. (a) Neither this Act nor compliance with the provisions thereof shall be construed to create any privity of contract between the United States Government, or any agency thereof, and any contractor submitting a bid to or contracting with the general contractor under any construction contract or give any such contractor any cause of action against the United States or any of its agencies.

(b) Nothing contained in this Act shall be construed to limit or diminish any rights or remedies which the United States or any agency thereof may have against the general contractor arising out of the construction contract, or to relieve the general contractor of any responsibility for performance of the construction contract because of any action taken by the United States or any agency thereof under any provisions of this Act.

(c) Nothing in this Act contained shall be construed to prevent any executive agency from requiring, in its discretion, approval or acceptance by it of contractors engaged or to be engaged by any general contractor on a construction contract or from making any other requirements it deems advisable, in its discretion, with respect to contractors engaged or to be engaged by general contractors on any construction contract or from requiring any information it deems advisable, in its discretion, as to the cost of performance of any construction contract [11] *for the purposes of this Act,* nor shall the imposition of such requirements give rise to any cause of action against the United States or its agencies by the general contractor [12a] ~~or~~ by any contractors engaged or to be engaged by the general contractor [12b], *or by any other person.*

(d) Nothing contained in this Act shall in itself be construed to create any contract or property rights in any person.

[13] SEC. 5. This Act shall become effective six months after the date of enactment.

COMMENTS BY THE COUNCIL OF MECHANICAL SPECIALTY CONTRACTING INDUSTRIES, INC. ON 10 SUGGESTED AMENDMENTS TO THE FEDERAL CONSTRUCTION CONTRACT PROCEDURES ACT SUBMITTED BY THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.

The following are the considered comments of the Council of Mechanical Specialty Contracting Industries, Inc., speaking on behalf of the electrical contractors, plumbing contractors, heating, piping and air conditioning contractors, and the sheet metal contractors of the United States, upon the nine suggested amendments to the above bill contained in a statement of John A. Volpe on behalf of the Associated General Contractors of America, Inc., and the additional 10th suggested amendment made by Mr. Volpe in his oral testimony on March 20, 1957.

(1) We see no objection to and join in recommending the suggested addition of the words "bid peddling by" on page 2, line 9.

(2) We have no objection to and join in recommending substitution of the word "after" for the word "of" on page 3, line 16.

(3) We have no objection to and join in recommending the addition of the words "or any part thereof" on page 3, line 22, and the deletion of the words "major category" on page 4, line 2.

(4) We have no objection to the principle involved in the suggested amendment No. (4) to section 2 (f), page 4, but believe the intent thereof could be better accomplished by deleting the words: "on a competitive bid basis", lines

18 and 19, page 4 and substituting therefor the following words: "on the basis of competitive bids to be submitted on a fixed date pursuant either to public advertising or invitation."

(5) We have no objection to the principle of the proposed amendment No. (5) but suggest the following would better accomplish its purpose and more clearly express its intent, that is, delete the words: "a performance bond which was to be furnished under the terms of the subbid", in lines 7 and 8, page 5, and substitute the following: "any performance bond or any statement that there was no collusion in the preparation of the subbid, which bond or statement was expressly called for in a written invitation from the general contractor to the contractor for a subbid."

(5A) We further suggest that the following words be added to the end of paragraph 2 (g), line 19, page 5: "ascribing one of the reasons set forth in this paragraph 2 (g)."

(6) We do not recommend the adoption of suggested amendment No. (6) raising the minimum amount of contracts governed by the provisions of the bill from $100,000 to $200,000. We recognize there is a size limit below which provisions of the bill should not be applicable but believe $100,000 more nearly approximates the proper limit than $200,000.

(7) We have no objection to and join in recommending amendment No. (7) that the words "and any chief officer responsible for procurement of such executive or independent establishment" be added after the word "corporation" in line 5, page 7.

(8) We do not recommend the adoption of suggested amendment No. (8) that the words "tunnels and bridges" be stricken, lines 11 and 12, page 7.

The reason ascribed that in many instances bridges and tunnels are included in highway contracts is already provided for in the bill which expressly excludes "highways * * * and the buildings or structures incident" thereto. Contracts for tunnels and bridges which are not incident to highway construction involve the same problems as construction of buildings. They are generally handled in the same manner and we believe should be subject to the provisions of the bill.

(9) With regard to the amendment suggested as amendment No. (9), we are in accord with the thought that the bill should not use redundant language and should have no tendency to affect standard industry practices. It is true that in many areas of the country offsite sewer, drainage and water supply piping are not normally installed by mechanical specialty contractors. We believe this situation is taken care of, however, in the framework of the bill itself. First, the bill expressly permits the general contractor to perform any category of mechanical specialty work, or any part thereof, himself. Therefore the definition of mechanical specialty work could not have a substantive effect on who actually will lay sewer, drainage and water supply piping. Second, the bill has reference only to mechanical specialty work which is part of a building project and covered by the contract for the building or structure. Certainly there is no doubt that onsite sewer, drainage and water supply piping is mechanical specialty work. As an alternate to suggested amendment No. (9), therefore, we suggest the addition of the following words at the end of section 3 (3), line 24, page 7: "to be performed as part of the construction contract."

(10) We are strongly opposed to the oral 10th suggested amendment of the AGC representative that the word "fifteen" be substituted for the word "five" in the 15th line, page 3. In the first place, it is highly unlikely that any responsible general contractor would be in a position to submit a bid without having received a definite and complete subbid. The instances of submission of a statement in lieu of listing by such a contractor would be extremely rare. They would involve only cases where the contractor had received subbids but because of some technicality or small omission they were not definite or complete. In such instances 5 business days would be more than ample for the general contractor to negotiate a final subcontract and submit the name of the subcontractor.

FURTHER TESTIMONY OF HENRY H. GLASSIE, GENERAL COUNSEL, NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION, AND COUNSEL, MECHANICAL SPECIALTY CONTRACTING INDUSTRY

Mr. GLASSIE. Mr. Chairman, I would like to state first that we see absolutely no objection to the two amendments just suggested by Mr. Fretz. We think they would be constructive and clarifying.

Mr. LANE. Very well.

Mr. POFF. May I interrupt you at that point? Let us be certain to what you are addressing your remarks. Do you mean that you agree with his suggestion with reference to the $25,000 limitation and the $200,000 limitation?

Mr. GLASSIE. No, Mr. Poff. I am glad you asked me to clarify that. I was referring to the two amendments suggested in the General Services Administration letter dated March 19.

I would like also to say that we feel the presentations of General Wilson and Mr. Poorman were very fair and moderate. We have relatively few differences of opinion with them. These largely result from possibly slightly different interpretation of the bill itself, most of which can be ironed out by slight changes in the bill.

I would like to discuss some of these suggested amendments with which we don't agree, and as to why we don't agree with them. Before that I would like to make two general statements for the record.

First, reference was made yesterday and in the Defense Department statement to a bill passed in 1938, and vetoed by President Roosevelt. I would like to state for the record that that bill is completely and totally different from this bill. The reasons why it was vetoed were reasons which would not relate to this bill. I think that is clearly shown by reading the veto message which appeared in the Congressional Record for June 16, 1938, page 9707. The reasons for vetoing that bill were, one, that it required a 60-day waiting period between advertising and opening of bids. That was the primary reason which is not related to this bill at all.

Another reason was that it required the Federal Government in effect to assure payment of all subcontractors by withholding funds of the general contractor. It provided for penalities to be assessed at the will of the agencies against a contractor who changed subcontractors or supply men and so forth. In other words, it was a totally different bill, and the reasons for vetoing it would have no application here.

We have referred before to the fear of the Defense Department that the act might be extended to other subcontractors or sub-subcontractors. I would just like to emphasize that there is no economic justification for so extending the act, and such an extension would be completely illogical. No other subcontractors have asked to be included. The sheet-metal contractors, who comprise virtually all of the sub-subcontractors have endorsed this bill in its present form. The suppliers have endorsed it. Such groups as the National Association of Electrical Distributors have endorsed this bill in this present form, and have never asked to be included in it.

Accordingly, we suggest the fear that the act might be unduly extended is a baseless fear. It is sort of beating a straw man, in our opinion, to worry about that.

Next, with regard to the general suggestion, I believe in the words of General Wilson, that this bill places Government in a position between contractors and subcontractors, we submit that this is simply not the fact. The bill would have no such effect, and no such tendency. But because of various statements and references in the hearings to determinations which might have to be made by the Government as to whether subcontractors may be changed, for example, we would like to suggest that the committee report expressly stated that the bill

calls for no determination whatever to be made by the contracting officer with regard to subcontractors. If a general contractor submits a certificate, for example, that he has no definite and complete subbid, the contracting officer has no obligation except to see that the form of the certificate conforms to the act. If the statement should be false, that is something that could be referred to the Department of Justice for prosecution under the statute relating to making false statements of the Government. It would be no concern of the contracting officer.

We believe under the bill it is absolutely clear that the prime contractor may change subcontractors at any time for any reason or without any reason. He doesn't have to get any permission from the contracting officer or the Government to change subcontractors. The only limitation on his right to change is that his price to the Government may be adjusted if he changes under 2 (h).

Mr. BOYLE. Downward.

Mr. GLASSIE. Downward. In other words, the only determination to be made by the Government under this bill is whether the substitution results in a saving and if so, if it was made under 2 (h), and accordingly the saving should be reflected in the price to the Government.

I would like to point out that this determination is one that can be made at any time, even after the contract was completed. It would never operate to interrupt or delay the work. It would only relate to the payment for the contract.

Again I would like to suggest, because of these somewhat confusing statements that have been made by some of the witnesses, I think it would be well if those matters were brought out in the committee report to show what the bill actually means.

Now, Mr. Chairman, I would like to discuss a few of the suggested amendments. Many of them we agree with. That is the amendments suggested by the Defense Department and by Associated General Contractors. Others we agree with in principle, but would have countersuggestions for slight modifications of wording. But there are a few that we feel pretty strongly about.

The first is the suggestion of the Defense Department that lump-sum negotiated contracts be eliminated from the provisions of the bill. In the testimony of General Wilson yesterday, as I understood him, he said the reason for this was that section 2 (f) was difficult to apply to some negotiated contracts. Of course, that is quite true. But the bill does not apply that section to all negotiated contracts. It is perfectly true that in some negotiated contracts that 5-day clause would not be workable, but it doesn't purport to. The language of 2 (f) at present is:

> A contractor who submits a bid with respect to a lump-sum contract to be awarded on a competitive bid basis may—

a possible clarification of this, if one is needed, would be to say awarded on the basis of competitive bids to be submitted on a fixed date pursuant to either public advertising or invitation. Alternatively we would see no objection to section 2 (f) being made expressly applicable only to contracts awarded on a competitive bid basis after public advertising. To eliminate negotiated contracts entirely would be to kill the horse to get a fly off his back. There is no reason whatever why the remainder of the act should not apply to lump-sum nego-

tiated contracts. Indeed, there is no problem at all for the general contractor to submit the names of his mechanical subcontractors with his final proposal for a negotiated contract. In that case he would normally have more time. It would be easier for him to do so. By the very nature of a negotiated contract, the prime contractor is almost bound to definitely know his subcontractors by the time his final proposal is submitted. Moreover, this is a matter of primary importance to the Government, because in negotiated contracts the price is directly and absolutely based on the subcontract prices.

In wartime they made us submit a breakdown showing what these subcontract prices were. Obviously if they are changed for no reason, that should accrue to the benefit of the Government. In other words, we believe the act should definitely apply to negotiated lump-sum contracts, but, of course, section 2 (f) cannot apply to all negotiated contracts. It could apply, in our opinion, to those which are termed "negotiated" merely because the bidders are a selected group, rather than those coming in as a result of public advertising.

A further suggestion which we consider of vital importance and totally unacceptable is the third amendment suggested by the Department of Defense, and I refer to the substitution of the word "acceptable" for the words "definite, complete, and responsive," in lines 11 and 12 on page 3. We believe this would subvert the entire purpose of the bill. The essential protection to the subcontractors and the essential price protection to the Government is the listing provision of section 2 (b), in our opinion. That is the requirement that the subcontractors be listed in the general contractor's bid, making their names a matter of public record.

The bill contains an exception to cover the very rare instance where the prime contractor has made a bona fide effort but he has received no definite or complete subbid for some category, but nevertheless he does have sufficient information to enable him to bid and to substitute an affidavit that he has received no complete and definite bid. But to permit a general contractor not to list a subcontractor and merely state that he had not received an acceptable bid would leave it up to the general contractor whether or not to list or whether to submit a statement in all cases. He could always say a bid of $1,911,000 was not acceptable, but a bid of $1,910,000 would have been. It would be a test that would leave it entirely in the hands of the general contractor whether or not he listed his subcontractors. In other words, we feel this would virtually destroy the purpose and benefit of the bill.

I would like to say that the question was raised about this 5-day period in which a contractor may change. The reason we feel that is acceptable is because the subcontractors are publicly listed. Therefore, any change is a matter of public record. There is a built-in deterrent to a change in the case where it is a matter of public record. That is, an improper change as distinct from a legitimate change. If the listing provision was so emasculated we don't believe the bill would serve its purpose. In other words, if the word "acceptable" were substituted, we don't believe the bill would properly serve its purpose, either from the standpoint of the Government or the contractors or subcontractors.

A third suggested amendment that we would like to comment on is the Defense Department suggestion having several parts to permit a general contractor to do the work himself in instances which are not

expressly provided for this bill as originally introduced. Of course, we feel the general contractor should be able to list himself and do the work. We feel it is entirely appropriate for a general contractor to change from a listed subcontractor to himself within the 5-day checking period. I suppose when he listed one who checks out not to be satisfactory, he should be able to do it himself. We feel he should be able to do it himself if the subcontractor refuses or fails or is disqualified by the Government. We do not feel he should be able to change to himself under section 2 (h). We agree with the Associated General Contractors that the general contractor's right to himself perform any category is amply provided for by the permission initially to list himself or to change to himself under 2 (f) or 2 (g).

Under 2 (h) there would be no adequate way for the Government to protect its financial interest. For example, if a general contractor lists Jones Plumbing Co. and under 2 (h) he changes to Smith Plumbing Co., and the Government is entitled to the difference in cost, they need to say what is your subcontract price from Jones and what is your subcontract price from Smith and subtract the difference.

But if he should shift to himself, they would have to audit his books to tell whether he was saving money or not. It would be a cumbersome and difficult problem.

Mr. BOYLE. Let me interrupt you at that point. Isn't it true if he feels that he can do that operation, he should so indicate at the time he gets his figures together?

Mr. GLASSIE. That is right.

Mr. BOYLE. Does this change the picture whether or not those other contingencies take place?

Mr. GLASSIE. If he wants to do it himself and can do it himself, he can list himself in the beginning. He can change to himself in the 5-day period, or at any time if the subcontractor fell down on the job he could change to himself. It seems to me that is adequate protection of the man's right to do the work himself, and it is satisfactory to the general contractors.

Mr. BOYLE. If he does not do that, it immediately appears that he is acting in bad faith. Most of that information should be available to him at the time it occurs.

Mr. GLASSIE. It certainly seems it should be known to him well ahead of the necessity of changing to himself under 2 (h).

Mr. POFF. It also appears that there might be a further danger if the amendment were adopted as suggested by Defense. Would it not be possible for a prime contractor, exercising his option under 2 (h) to shift to himself and to use the estimates prepared by the subcontractor in his bid and therefore save for himself the expense of preparing those estimates?

Mr. GLASSIE. Of course, that saving would be inherent in such a shift.

Mr. POFF. Under 2 (h) that savings would inure to the benefit of the Government.

Mr. GLASSIE. It should, but you would have to audit his books to find out actually whether he was saving money. You would have to go to his payroll records and everything else. This bill has in our opinion no complications in there now and it would be gratuitously adding one.

Mr. LANE. Mr. Glassie, will you go back to (f) for a minute on page 4 and confine yourself to what the captain said yesterday, that we

still have an escape clause in the bill because it allows for a change of subcontractor?

The general contractor who submits a bid with respect to a lump-sum contract awarded on a competitive basis may at any time within 5 days of the date of the opening of the bids therefor engage or substitute a different contractor from the one named in accordance with—

and so forth and so on.

You listened yesterday to the testimony of the naval captain.

Mr. GLASSIE. Yes, sir.

Mr. LANE. That this bill does not take care of this situation.

Mr. GLASSIE. I don't agree with Captain Benson on that at all. We feel that the purpose of this 5-day period is for checking of matters which prime contractors contend they do not have time to check before submission of bids. Of course, it is conceivable that this 5-day period could be improperly used. But we feel it is unlikely that it will be improperly used because the names of the subcontractors will be listed and a matter of public record. We feel that it is something that should be watched and if this 5-day period is abused, it is something that can be easily determined from the public records. We feel that general contractors want to do the right thing. They are forced into a system, as the subcontractors are, under present contracting procedures. A man who lists, say, Ace Electric Co. in a public bid, which is a matter of public record, is not going to change within that 5 days to someone else except for a legitimate reason, or is not likely to change in that 5-day period to someone else except for a legitimate reason, because it is all public and in the open.

Mr. POFF. Moreover, might I suggest that it takes two parties to commit the practice of bid shopping; it takes both a shopper and a peddler.

Mr. GLASSIE. Absolutely, it always takes two parties. I don't mean to imply that this is a one-way proposition, or that there is any difference in this respect between contractors and subcontractors. It is quite the reverse. That is our reason for feeling this 5-day period is acceptable.

Mr. LANE. There is still a chance; isn't there?

Mr. GLASSIE. There is still a chance that this 5-day period might be abused, and that is something that time will tell. I think it is pertinent to point out that while Captain Benson objected to the 5-day period, he objected even more to the bill without the 5-day period. It is difficult for me to know just what his real position is on it.

Mr. DONOHUE. Do I understand, sir, that in the event that the prime contractor should change the subcontractor within the 5-day period, and the substitute would do the work cheaper than the person named at the time that the bid was submitted originally, that any savings inuring to the prime contractor would have to be paid over to the Government?

Mr. GLASSIE. The way the bill is drawn, if a change is made during this 5-day period, the prime contractor would not be accountable for the difference. The reason is that we conceive this period as a period in which he can check up on the one he has listed to see about his credit, his workload, his availability, his reputation and ability. In other words, a change during that period is not a change or would not normally be a change just to save money, but a change because the one originally listed was not in fact satisfactory.

I don't like to suggest that we feel this 5-day period is an ideal solution, but we feel it is workable and will work and will preserve the essential purposes of the bill from the standpoint of the Government and the contractors and subcontractors.

Mr. DONOHUE. Wouldn't the bill be much better without it? That is, in trying to eliminate this evil of bid shopping?

Mr. GLASSIE. Mr. Donohue, the bill in the last session of course did not have such a clause. However, the Associated General Contractors contended very strongly that they needed some such period after the submission of the bids and they gave a list of 10 reasons which are part of the record. I don't have them before me, but they are pretty convincing as to why they needed a short period after the bid opening. We feel that the essential purposes of the bill will be protected by the listing provision and by the fact that this is a short period which we hope the committee report will state is for the express purpose of checking and only changing when the originally listed subcontractor did not check out.

Mr. DONOHUE. Let me ask you this, as a matter of personal information to me. In the practice of awarding Government contracts, within what period of time after the invitation is made public, or after the public knows of the Government being interested in bids for a particular job, is a contractor given to submit his bid?

Mr. GLASSIE. Possibly some of the gentlemen from the agencies would be better qualified to answer than I, but I would say that 30 days is the usual time. Sometimes 20 days. We hear a tremendous number of complaints from the contractors that they are not given enough time and that they would really save more for the Government if there were a longer period between the invitation to bid and time for bid opening.

Mr. DONOHUE. Let us assume for the moment that they are given a period of 30 days within which to submit bids to the Government for a particular job. Would you not say that would be adequate time for a prime contractor to be able to check on any bids that he would receive from the subcontractors to do any of his mechanical work?

Mr. GLASSIE. The general contractors suggest that they frequently get their subcontract bids at the last moment. It is not that they didn't have time, but the subcontractor puts in a bid only an hour or two ahead of time. Therefore, they have not had a chance to check on some of the matters necessary to be checked. I don't want to be in the position of arguing the point of the Associated General Contractors here, but it is true that the general contractor frequently gets his subcontracts at the last minute. While we feel in most cases he would have a chance to check everything he needs before he submits his bid to the Government, there are cases where he does not have that chance. I mean he just did not have but an hour and maybe this is a contractor from San Francisco bidding on a job in South Carolina, and he has not had a chance to check up to see whether his subcontractors are proper.

Mr. DONOHUE. From your knowledge and experience as a representative of subcontractors, could you tell us whether or not the prime contractor exacts a performance bond from a subcontractor?

Mr. GLASSIE. I would say in a minority of the cases—a small minority of cases—whether it would be 1 in 10 or 1 in 5, I would not say. It is occasional or infrequent, but it is not usual. Of course

he can. It is entirely up to the general contractor whether he wants to or not.

Mr. DONOHUE. I was wondering what the established practice was.

Mr. GLASSIE. I think the established practice is not to require a performance bond of a subcontractor with whom you are familiar, but on an important job to require one from a subcontractor unknown to you, or that you would otherwise be doubtful about. I would say once in 5 times or once in 10 times would be a reasonable estimate of the number. It is not customary. Mr. Donohue, this bill does not, of course, change that situation.

Mr. LANE. Mr. Glassie, Mr. Brickfield would like to ask you a question.

Mr. BRICKFIELD. I am addressing myself to subsection 2 (f), Mr. Glassie. Please suppose a situation where the bids are opened and the subcontractors are named in the bids. Other subcontractors look at these public documents to see who are the low bidders among the the prime contractors, and they go to the prime contractor who is awarded the contract and ask what the subcontract work is being done for and make an offer to do it for a lesser sum, and the prime contractor, seeing where he can save money, agrees to substitute this new subcontractor. We would have a situation there, I believe, where the prime contractor would be making a saving, but it would not inure to the benefit of the Government because the prime bid has already been submitted.

Mr. GLASSIE. Mr. Brickfield, that is perfectly true and it is perfectly possible and undoubtedly may actually happen in some cases. We don't thiuk it is going to happen frequently for two reasons. First, if a man lists subcontractors in his bid and he knows he is going to have to and actually does, it means he has taken competitive bids for his subcontracts. He has probably already gotten the best price. Therefore, there is not this incentive either by the subcontractors or from the standpoint of the prime contractor, to change. Once you have gotten the right price, which is our trouble now—the prime contractor is not getting the right price before he goes in to the Government—under this bill if he has listed and taken competitive bids, he has probably gotten the right price. By right price, I mean the low competitive price.

Second, he has listed this as a matter of public record. Everybody knows who it is. I don't think many general contractors would want to be in the position publicly of habitually and continually changing for unexplainable reasons within that 5-day period. We don't think that many subcontractors would want to be in the public position of habitually and continually having subcontracts changed to them in that 5-day period. We think the publicity of it is in itself a deterrent.

Mr. DONOHUE. Even though it might save the prime contractor thousands of dollars? Wouldn't that be incentive enough?

Mr. GLASSIE. It certainly would.

Mr. DONOHUE. In fact, isn't that the only incentive that would prompt a prime contractor to accept a substitute?

Mr. GLASSIE. Yes, sir. We feel where he has taken competitive bids and gotten a final price beforehand, which would be the inevitable result of knowing he had to list and actually listing, then there is not going to be this big margin of saving. If you have gotten a low com-

petitive price from a large circle of subbidders, there is not apt to be anyone else who can do it for a whole lot less.

Mr. DONOHUE. As Mr. Brickfield has pointed out, prior to the time that the bids are opened, insofar as the prime contractor is concerned, he has had many bids from subcontractors and prior to the time he submits his bid he picks out one of them. But probably 10 or 12 others have also submitted bids. In a matter of probably 4 or 5 hours he could contact those other 11 or 12 and say, "I listed X as the subcontractor for this electrical work or sheet metal work. Are you willing to change the bid that you submitted originally which prompted me to pass you by for this other fellow?" If at the particular time Y was contacted he didn't have too much work, in order to keep his organization together he would say, "Well, I probably could do the job and will do it for $5,000 less."

Having in mind the human equation, don't you think the prime contractor would be most happy to find himself enriched by $5,000 by substituting Y to do the work.

Mr. GLASSIE. Certainly, Mr. Donohue, I can't disagree with what you have said. On the other hand, this idea of having a 5-day checking period has been thoroughly discussed in contracting circles all over the country from coast to coast and in dozens of meetings and the consensus of the contractors and subcontractors is that it will work and that there will not be just a 5-day bid shopping period.

There is the fear in the minds of some that it will just be a 5-day bid shopping period. We don't think so.

Mr. DONOHUE. It boils down to this, does it not, that it merely minimizes the possibility?

Mr. GLASSIE. It very much minimizes it.

Mr. DONOHUE. It does not entirely eliminate the possibility?

Mr. GLASSIE. It by no means entirely eliminates the possibility. I don't believe we can draw a bill that would entirely eliminate the possibility of bid shopping.

Mr. DONOHUE. I mean if you didn't have the 5-day clause in there, wouldn't that entirely eliminate it?

Mr. GLASSIE. It would more nearly eliminate it.

Mr. DONOHUE. Without that 5-day clause in there, I don't see how the evil possibly could exist. That is, having in mind when the bid was opened, X company would be designated to do the sheet-metal work. It could not be changed thereafter because there would not be any incentive to change, other than the fact that the prime contractor subsequent to the opening and the acceptance of the bid found out that the subcontractor was not in a position to perform. Do you follow me?

Mr. GLASSIE. I certainly do. I would say this, if the bill did not have the 5-day period, it would eliminate bid shopping except completely illegal. That is, by concealing costs or something of that sort.

Mr. DONOHUE. What do you mean by that?

Mr. GLASSIE. I mean not honestly reporting to the Government what the difference in cost was. I mean something of that sort.

Mr. DONOHUE. If he substituted without this 5-day clause being in there, he would have to come to the contracting agency, would he not, and give reasons? After giving those reasons, among the reasons that he undoubtedly would give would be "I found that this subcontractor that I designated in my bid was not in a position to perform for credit

reasons" or because of lack of experience or for several other reasons, "and therefore I want the Y company to be substituted."

The contracting agency would investigate whether or not he was truly representing the situation and then it would come down to whether or not he was saving any money by it, by the substitution. If they found that he was making a saving, they would then say, "if you do substitute, any savings that are effected will have to be paid over to the Government or deducted from your original contract price."

Mr. GLASSIE. I don't think there is any question that the bill by its direct operation would more completely eliminate bid shopping if the 5-day period were not in it. That is true. We feel, however, that the bill with the 5-day period would so nearly eliminate bid shopping as to leave it no longer a general industry practice. As drawn, it will substitute an industry practice under which the general contractor normally and customarily takes open competitive bids for his subcontracts, using the low responsible subbidders.

Mr. DONOHUE. In your opinion, what is the real reason why the prime contractors took the position that they would withdraw their objection to this bill if that 5-day provision were put in?

Mr. GLASSIE. We accept completely their expressed reasons that they need a period to check, and for legitimate checking the reasons that they have set forth in writing for the record.

Mr. DONOHUE. Let us have in mind now for the moment that this evil here does now exist among some prime contractors. Let us look behind the reason, or rather, let us look at the reason. Is it not the reason that they by doing it will be able to make additional profit?

Mr. GLASSIE. Yes, in the specific instance.

Mr. DONOHUE. That is the evil of bid shopping.

Mr. GLASSIE. That is one aspect of the evil of bid shopping. We don't feel that it is the entire evil.

Mr. DONOHUE. What are the other aspects of the evil?

Mr. GLASSIE. I think possibly even more important is that a system exists in which bid shopping is customary—a system of private haggling over subcontract prices as distinct from competitive bidding for subcontract prices.

Mr. DONOHUE. What is the purpose or the objective or the cause of the act on the part of the prime contractor?

Mr. GLASSIE. Undoubtedly the prime contractor feels he is going to make more money by one system, certainly. We don't know that he will.

Mr. DONOHUE. With this 5-day clause in there, wouldn't the objective or the reason or the purpose still exist insofar as the prime contractor is concerned?

Mr. GLASSIE. Of course.

Mr. DONOHUE. He could do it with this escape clause and still be in the same position he was before any such law as this would be enacted.

Mr. GLASSIE. He still could, sir, but we feel he would be much less likely to.

Mr. DONOHUE. Why?

Mr. GLASSIE. Because of the public listing of the subcontractors. There are some States and areas where it is customary to list subcontractors. There is no restriction on changing them at all. We found

that in those areas there is much less bid shopping because the bid shopping is then done in the public eye. There is in fact less of it merely because it is public. Moreover, bid shopping can be done in an hour, as you say, or maybe in a 10 minute conversation. Normally it is something that takes a long period of time. Five days is in itself a deterrent.

Mr. DONOHUE. He has the names. Undoubtedly when the subcontractors submit their bid they have a breakdown, as a result of which they arrive at the subcontract price. Is that not so in general practice?

Mr. GLASSIE. They have to some extent a breakdown. Normally a subbid would not include a complete breakdown of how the cost was arrived at.

Mr. DONOHUE. What the prime contract is concerned about is what his position might be from the standpoint of honor or dishonor among the trade.

Mr. GLASSIE. That is correct.

Mr. DONOHUE. If he makes changes that word gets around even under present conditions?

Mr. GLASSIE. No. It is something that is almost impossible to do under present conditions.

Mr. DONOHUE. Do you mean the subcontractors today under existing practices do not know that their bid is being used by the prime contractor for the purpose of getting lower bids?

Mr. GLASSIE. They frequently suspect it, but it is not something that is provable.

Mr. DONOHUE. If it is not provable, why is it that there were any complaints among the subcontractors?

Mr. GLASSIE. I mean there are many instances.

Mr. DONOHUE. In other words, how do they know that they are being discriminated against?

Mr. GLASSIE. That is true. But in each individual instance the particular transaction does not stand out publicly.

Mr. DONOHUE. Why should a prime contractor be concerned about the public. He is concerned about getting that job, isn't he, and making as much money as he possibly can out of it?

Mr. GLASSIE. Of course, he is also concerned with his reputation in the industry. If it turned out that the public record showed that he got 25 Government jobs and in all 25 he changed all his subcontractors in a 5-day period, and this was a matter of public record, he might find difficulty in getting people to bid to him.

Mr. DONOHUE. I must say I cannot absolutely agree to that, because if all the trade took that position, these same contractors that are abusing the confidence that should exist between prime and subcontractors wouldn't be able to get any bidders today. Therefore, they would not be in a position to get any of these Government contracts. Isn't that so?

Mr. GLASSIE. Yes; but I think there is a difference in degree. I don't disagree with you. I feel that there is a difference in degree.

Mr. DONOHUE. I am asking these questions because I don't think that with this 5-day clause in here the evil is going to be eliminated.

Mr. GLASSIE. Mr. Donohue, we don't feel it will be completely eliminated, but we feel the system will undergo a major readjustment.

Mr. DONOHUE. What I have in mind is this, sir. Those that are branded now as being unscrupulous because they resort to this practice will still be unscrupulous to the point of using this escape clause to enrich themselves.

Mr. GLASSIE. I would like to suggest, or we hope that this committee might take a look, if this bill becomes law with this 5-day clause, in a year or two, and see how this five day period is being used. That will be a matter of public record, and easily ascertainable.

Mr. DONOHUE. Let me ask you this. What is your thought if a provision were put into the bill that the prime contractor shall, within 5 days after the contract is awarded him, submit the names of all subcontractors that will do the subcontracting work?

Mr. GLASSIE. We don't believe that would be anywhere near as effective or satisfactory, because we want the prime contractor to finalize his price before he puts the bid in, and list his names at that time. If he has done that, then we are not so concerned about his right to change in the 5-day period. But if he didn't have to finalize his subcontractor price until 5 days afterward, we don't think it would eliminate bid shopping at all. I would not say at all, but not nearly to the same extent, and it would not give the government the benefit of the final price in the bid.

Mr. DONOHUE. For the same reason you give me for justifying the 5-day clause, wouldn't the five days be too short for him to eliminate the bid shopping?

Mr. GLASSIE. That would be better than nothing, but we think this perhaps would be more satisfactory. This listing provision in his bid means he has made a final deal or has very likely made a final deal before he submitted his bid.

Mr. DONOHUE. Bear this in mind. The reason for that 5-day clause being in this present bill is to enable him to ascertain the credibility of the subcontractor that he has in mind. Credibility not only financially, but from the standpoint of skill and otherwise to do the job. Isn't that 5-day clause in there for that purpose? If the prime contractor is awarded a contract without submitting the names of any subcontractors, and he will have one in mind at the time he does make up his final figure before the contract is awarded to him, it gives him that 5-day period to go out and look into the ability from all standpoints of the subcontractor to make certain that he will do and can do the work. Then he comes in with the names and those names, from what we are told, should stand.

Mr. GLASSIE. Certainly those names should stand. Certainly there would be a lot of merit in having him definitely submit the names even 5 days later. We feel that the real guts of this thing is having him list them in the beginning. I realize that there are a lot of differences of opinion on that.

Mr. DONOHUE. I am seeking some suggestions. I don't know anything about the building trade or its practices.

Mr. GLASSIE. We are frankly, as the committee appears to be, somewhat concerned that this 5-day period may be abused. We know that if it is adopted this way we will have the ability to find out whether it is being abused. We do feel it won't.

Mr. DONOHUE. The question really in the back of my mind is this. Why the prime contractors want that 5-day period.

Mr. GLASSIE. I think they want it because they feel that they don't have an adequate opportunity to check the subcontractors before they submit their bids, and they need a period afterward to make sure that the bids were complete, that the subcontractor is financially responsible, that he didn't have another workload that would make it impossible for him to do the job, or other similar matters. In most cases that could be done in a day, but in some cases it could take 5 days.

Mr. DONOHUE. With all these bureaus that are around—Universal Credit, Commercial Credit, CIT and all—all you do is get in touch with the chamber of commerce in the community in which he operates. They could tell you if he was financially responsible.

Mr. GLASSIE. Financial responsibility is probably one of the quicker things to check. The gentleman who wrote the list of reasons why the general contractors need this 5-day period is here. Possibly now or after I am finished he would be glad to give it to you.

Mr. DONOHUE. That is fine.

Mr. LANE. Mr. Glassie, before we pass on, I would like to ask you a few questions. Was this 5-day provision in your bill last year?

Mr. GLASSIE. No.

Mr. LANE. In other words, I can see by your testimony here that you are not wholeheartedly for the 5-day provision. I assume that it is the result of the conferences of subcontractors and the general contractors on this bill that this 5-day provision was put in there, and it is one of the concessions to the general contractors, is that right?

Mr. GLASSIE. Not entirely, sir. It was put in partly in a spirit of conciliation but partly because we became convinced that they had merit in the contention that they needed a period.

Mr. LANE. It was to overcome some of the real objections to the bill of last year by the general contractors. I assume it was to make more friends in the Congress.

Mr. GLASSIE. I think both sides made a sincere effort to understand the position of the other side and to try to go along with the contentions of the other side as far as reasonable. We feel we went along perhaps a little far, but we don't want to suggest that we agree to this merely to effect a compromise. We only agree to it because we felt that it still would work and accomplish its purpose.

Mr. LANE. Thank you very much. Congressman Poff would like to ask a question.

Mr. POFF. Any prime contractor who exercised his option of substitution under section 2 (f) is required within the 5-day period to give notice in writing to the contracting agency. My question is, When will that notice become effective? When the prime contractor postmarks the writing or when it is received by the contracting agency?

Mr. GLASSIE. May I look at the section?

Mr. LANE. At the bottom of page 4 and the top of page 5.

Mr. GLASSIE. Of course, the bill does not expressly state. I assume that it would be an area in which the agencies could make a regulation. I should think the regulation would provide that the mailing of the notice by ordinary mail constitutes notice. I think that is something the agencies will have to cover in their regulations unless it should be expressed in the bill.

Mr. POFF. In order to give full effect to the 5-day rule, which is one of the essential components of the compromise, it would seem to

me that the intent of that language is to give the prime contractor the right to submit his notice in writing so long as it is postmarked on the 120th hour after the bid opening.

Mr. GLASSIE. I believe that would be the proper construction, sir.

Mr. POFF. Do you not think that would be a fair interpretation from the standpoint of the specialty contractors?

Mr. GLASSIE. I think that would be a fair interpretation. I don't believe that anybody can say that 5 days is the ideal time. Maybe 1 day is better. Maybe 8 days. But 5 days is agreed upon by the whole industry, and I think if the letter is postmarked at the end of the fifth day that would be a reasonable interpretation of the act, and I think the agencies certainly have authority to put that in their regulations.

Mr. LANE. Is there anything further that you have?

Mr. GLASSIE. I have a couple of small points that will not take too much time.

I would like to mention again this suggestion of raising the $100,000 to $200,000. We have given that every consideration and we still feel $100,000 is high enough.

Mr. LANE. You answered that before, Mr. Glassie.

Mr. GLASSIE. Yes, sir. The last thing I would like to mention is an oral suggestion by Associated General Contractors that the word "fifteen" be substituted for the word "five" on the 15th line of page 3. We object very strenuously to that. In the first place, it is highly unlikely that any responsible general contractor would be in a position to submit a bid without having received a definite, complete subbid. In the instances of submission of a statement in lieu of a name would be because of some technical or small omission a subbid was not definite or complete. In such instances we feel 5 days is more than adequate time for the general contractor to come forward with the final name. We certainly would object or do not feel it would be desirable to change that period from 5 to 15 or any period longer than 5.

Mr. DONOHUE. What is that again, sir. You think that 5 days would enable them to get all their data together to make a determination?

Mr. GLASSIE. Yes, sir. These are in the cases where they did not submit a name but submitted an affidavit or certification that they had been unable to get a bid or unable to get a complete bid.

Mr. DONOHUE. For that reason you think 5 days would be adequate for them if they had not been able to get a bid to go out and get a bid.

Mr. GLASSIE. Absolutely. They must have gotten some price or they would not have been able to put a bid in to the Government at all. They must have gotten it somewhere in their negotiation. Certainly 5 days is adequate and we don't agree with their suggestion that they should have 15 days. We have comments on a number of these other suggested amendments, but we have put them in writing, and we don't think there is any necessity to take the time of the committee to go into them, but I will if you wish.

I would like to put in the record a reference to a letter from Frank B. Durky, director of public works of the State of California, which for several years, since the Second World War, has had a listing bill quite similar—not by any means identical—and his letter is found in the record of the Senate Judiciary hearings on S. 1644 on page 14.

He makes the flat statement that the Division of Architecture has found that substantial savings have resulted from the flexible system now in effect.

You will recall Mr. Williams referred to similar evidence from a number of other States where they had similar proceedings, but the experience of California I thought should be in the record.

I would like to refer to the record of the Senate committee which contained letters from a number of industrialists, such as a letter from Henry Ford, stating that his company used a system similar to this in their own self-interest.

Mr. DONOHUE. In those contracts that are entered into my private industry, do they have the 5-day clause?

Mr. GLASSIE. I am not aware of a similar arrangement used by any private industry, no, sir, but private industry is usually a little more flexible in the way they do things. There may be some. I just don't happen to know of any.

Mr. LANE. Thank you, Mr. Glassie.

Mr. GLASSIE. I have nothing further unless you gentlemen have some further questions.

Mr. LANE. You have been very, very helpful to the committee, and we appreciate your testimony.

Mr. GLASSIE. Thank you.

Mr. LANE. The next witness is Mr. Leo Howard Kerns, executive director, Insulation Distributor-Contractors National Association, of Washington, D. C.

(No response.)

Mr. LANE. I understand he is not here.

Is there any other witness that desires to testify?

TESTIMONY OF B. L. KNOWLES, LEGISLATIVE COUNSEL, ASSOCIATED GENERAL CONTRACTORS OF AMERICA

Mr. KNOWLES. My name is B. L. Knowles. I am legislative counsel for the Associated General Contractors of America.

Mr. LANE. Your office is here in Washington, D. C.?

Mr. KNOWLES. Yes. 1227 Munsey Building. We would like an opportunity, either now or by comunication to the subcommittee, to answer Mr. Donohue's question as to the reasons why this 5-day period is absolutely essential to the general contractors in making their bids. I think we can do it. These are reasons which have been agreed to by the proponents of the legislation. I can give them to you briefly now, or we can write you a letter.

Mr. LANE. If Mr. Donohue would like to have them right now, you may proceed.

Mr. DONOHUE. Why don't we give them briefly right now.

Mr. KNOWLES. It will take but a moment to tell you briefly.

In the first place, let me say that the Associated General Contractors of America are just as desirous of having this 5-day period used honorably as are the proponents of this legislation, and just as firmly determined to use every effort to accomplish that purpose.

Furthermore, as the proponents have testified, and as our witnesses have testified, bid shopping and bid peddling is not a one-way street. When it is indulged in, it is indulged in sometimes primarily by

the subcontractors and sometmes by the general contractors. The general contractors are not always the blacksheep in this proposition.

But to get to the meat of the point, let me say this: A general contractor is obliged to file with his proposal a bid bond or other bid security, which guarantees his figure or his proposal for a period of anywhere from 10 to 60 days. On some very large projects I have seen them up to 90 days. It has been testified to that in some of these contracts, the mechanical subcontract items aggregate 40 percent of the bid. We will agree to that. We know that is true. The general contractor has to guarantee his proposal. It is therefore very important that he have an opportunity to determine the reliability of the subcontractors which he proposes to employ.

This 5-day period gives him that opportunity. Let me assure you, gentlemen, that it is not too much. Let me take you into the estimating room of a contractor's office. He has a deadline to meet. His subcontract bids come in sometimes an hour or 2 hours prior to the time that he has to submit his bid. Even a longer time may be involved.

Bear in mind, please, that the general contractor not only has to check up on the bids that he receives for these five mechanical specialty contracts, but he has to check up on a multitude of others—painting, plastering, and so on. He has to do all that checking as far as possible before his bid goes in.

But he must have an opportunity to check up on these things afterword. A contractor cannot buy a subcontract for plumbing or heating or electrical work, the way you buy a loaf of bread. There are many complexities about these bids. The bids do not come in uniformly very often.

Mr. DONOHUE. Mr. Chairman, would the gentleman permit me to interrupt at this point?

Mr. KNOWLES. Yes, sir.

Mr. DONOHUE. Will you give the committee the benefit of your knowledge and experience insofar as the amount of time that is given to the general contractor from the date that the invitation is publicized to the date that the bids must be in the hands of the contracing agency?

Mr. KNOWLES. It varies entirely with the complexity of the project. It is sometimes 2 weeks and sometimes 3, 4, or 5 weeks.

Mr. DONOHUE. It never goes beyond 5 weeks?

Mr. KNOWLES. It might in some specific cases.

Mr. DONOHUE. Do I understand the procedure to be that when these invitations are publicized, either in the newspapers or in the trade journals or by mail, that the general contractors that are interested or that might be interested in bidding get in touch with the agency for which the work is to be done and all the plans and specifications are made available to them? Is that correct?

Mr. KNOWLES. That is correct.

Mr. DONOHUE. In other words, it is just one set of plans for the job, with copies, and all the specifications are set forth?

Mr. KNOWLES. That is right.

Mr. DONOHUE. The general contractor does not have to do any of that work?

Mr. KNOWLES. That is right.

Mr. DONOHUE. The only work incident to the performance of the general contractor is to get prices?

Mr. KNOWLES. He has a lot more work than to just get prices from somebody else.

Mr. DONOHUE. Would you inform the committee what additional work the prime or general contractor has to do?

Mr. KNOWLES. He has to take off quantities of those items which are not subcontracted which in most cases is 60 percent or more of the job—the brickwork and all the other work.

Mr. DONOHUE. That is not peculiar to any particular job. The general contractor knows what work he is going to do and what work he will have to parcel out to subcontractors, doesn't he?

Mr. KNOWLES. Generally speaking, yes. It is a very arduous job taking off these quantities and getting those figures. It takes a long time.

Mr. DONOHUE. I am merely seeking information so that probably I can use it elsewhere. Having in mind that when he gets the plans and specifications, he does know what work he is going to do as a general contractor and what work he will have to let out by way of subcontracts.

Mr. KNOWLES. He does know what he proposes to let out.

Mr. DONOHUE. As I understand it—and correct me if I am wrong—when the plans and the specifications are delivered to the general contractor, the whole job is broken down, is it not? There is a sheet giving you the building when it is completed, and then it is broken down into plumbing work, heating work, electrical work, the sheet-metal work? There is a sheet for each one of those particular types of jobs?

Mr. KNOWLES. Yes, that is right.

Mr. DONOHUE. Then he can get as many copies of those as he desires for the purpose of sending them out to the subcontractors themselves.

Mr. KNOWLES. They can, or they can take off the quantities in the contractor's office as they very often do.

Mr. DONOHUE. So that after the subcontractors get those copies of the plans and specifications for their particular line of work, they send in their bids to the general contractors that might be bidding.

Mr. KNOWLES. That is correct.

Mr. DONOHUE. So that there is not too much detail work for the general contractor to do insofar as the subcontractors are concerned, because those details are out of his field and in the field of the specialty contractor.

Mr. KNOWLES. That is true, Mr. Donohue, but that is not so easy as you may think, because the plumbing or the electrical contractor or heating contractor has the specification, but I have been in the business a good many years, and I know for a fact that I have never gotten a set of bids on a single subcontract—mechanical subcontract—that were uniform as to what those bids contained, even though the specifications were entirely clear. This is because a subcontractor thinks perhaps it would be to my advantage to not do this particular item or that. I could go into detail. Such as digging the trenches for the plumbing pipes in the basement. They may be included in the plumbing specifications because the plumber's pipes have to go in them, but he may say, "I will let the general contractor do that," and he figures accordingly. That is only one detail, Mr. Donohue, of many, many, many things. Bids on these subcontracts are very complex. It takes

them a great deal of time to make up these bids. That is why they hate to see their bids misused.

We as general contractors know that and we hate to have our bids misused, as they often are. So it is not a simple proposition to go out and buy a heating job or an electrical job or a plumbing job or a ventilating job. You just can't do it the way you would buy a carload of cement. It is not possible, because every one of them has to be studied.

Remember, the contractor's bid is protected by bid security, and if he has to guarantee 100 percent of his bid he certainly ought to have 5 days to guarantee or to check upon the subcontractors who furnish 40 percent of that job.

Mr. DONOHUE. Mr. Knowles, there is a great question on my mind, and has been since this proposition was first presented to the Congress for legislation, as to the need of it. But after listening to so many of the people in the trade, they have convinced me that there have been considerable abuses going on insofar as general contractors are concerned, and these specialty contractors. I feel that if we are going to enact legislation, it should be legislation that will correct the evil. As I stated to the gentleman that previously testified, I think you are not eliminating the evil if there is a 5-day period within which these bids can be peddled. Do you agree or disagree with me on that premise?

Mr. KNOWLES. I don't think the situation would be helped. I don't think the evil would be cured merely by that.

Mr. DONOHUE. In other words, don't you agree that the evil will be as bad insofar as those few unscrupulous general contractors are concerned as it is at the present time?

Mr. KNOWLES. No, I do not.

Mr. DONOHUE. Why don't you?

Mr. KNOWLES. I think because the eyes of the industry will be upon them with a more acute vision than they ever have been before. I agree entirely with Mr. Glassie in that respect.

Mr. DONOHUE. If there are those unscrupulous general contractors now, with the money incentive that will still exist if they can peddle these subcontracts, don't you think they will still resort to that unscrupulousness?

Mr. KNOWLES. No, I do not. May I go on for just one very brief moment? There are many other things that have to be checked up. The subcontractor's labor relations, the amount of work that the subcontractor whom the general contractor wants to use may have. It may be up to his capacity. The contractor wants to know that. The general contractor not only has to check the low subcontractor's bid, but he has to check the others, too, because the low bid is not always the bid that is the best bid for him to accept, because the low bidder may have omitted something.

Mr. BOYLE. Will the witness yield?

I would like to listen to more of this, but there has been a call of the House. In the light of that fact, I am going to make the motion that we suspend at this time, because I have to get to the floor.

Mr. LANE. Mr. Knowles said he will only be a minute or two. After we finish Mr. Knowles, the hearings will be over as far as this committee is concerned.

Mr. BOYLE. I put the motion because I did not want to summarily walk out of this hearing and go to the Floor of the House.

Mr. LANE. Thank you.

Mr. KNOWLES. To conclude, I would say that the reputation of a given subcommittee for cooperation with the general contractor is very important, because a subcontractor who is not cooperative can make the entire contract very expensive to the general contractor.

Mr. LANE. That one stands out in my mind because as I recall Mr. Volpe testifying for the general contractors, he stated that it is not only the subcontractor being the lowest bidder, but his ability to perform the contract after he gets it, by his facilitating the job and getting in there and doing the work.

Mr. KNOWLES. That is absolutely correct.

Mr. LANE. To cooperate with the rest of the tradesmen on the job.

Mr. KNOWLES. Yes, you can see, gentlemen, that there are many details that have to be looked into by the general contractor. Please bear in mind that he not only has these five trades that he has to look into very carefully, but he has to think of all the material bids and everything else, to see if they are in order. I tell you that a contractor's estimating office before his bid goes in is a mighty busy place.

Mr. LANE. Thank you, Mr. Knowles.

Captain, may I say right here before we terminate our hearings here, as I recall on yesterday Congressman Forrester of Georgia wanted to ask you a question or two, but evidently the Congressman is busy with his constituents at the moment, and he perhaps could get the information at a later date for the record, if there is something further that he is interested in. That is the reason we requested your presence here this morning, and I want to again extend the appreciation of the committee for your returning here today to help this committee to work out some of these amendments.

Captain BENSON. I will be glad to return any time. Mr. Chairman.

Mr. LANE. There are no other witnesses so this will complete the hearings.

Captain BENSON. May I say one word?

Mr. LANE. Yes.

Captain BENSON. I think Mr. Glassie indicated that I objected to the 5 days. I did not object to the 5 days. I only pointed the 5 days out as an escape hatch. I made no objection whatsoever to it.

Mr. LANE. That is right. You only brought to our attention the fact that in there there may be an escape section.

Captain BENSON. An escape hatch, I would call it.

Mr. DONOHUE. I think you stated, Captain, did you not, that by having an escape hatch in there—you correct me if I am not quoting you correctly—that it would enable the unscrupulous general contractor to go out and get hold of some of his friends and have them bid a little lower, and thereby get the contract.

Captain BENSON. I said the opportunities were there if this bill were directed at unethical contractors, the escape hatch was still open, and they could do whatever they wanted to.

Mr. DONOHUE. And in order for this bill to bring about the firming up of the contract at the time that it was being awarded, isn't it your opinion that the escape hatch should be eliminated?

Captain BENSON. No, sir, I didn't say that.

Mr. DONOHUE. No, I don't say you did say it. Isn't it so that for the purpose of establishing firm contracts, but only from the standpoint of the general contractor, but also from the standpoint of the subcontractor, that there should not be any escape hatches?

Captain BENSON. I would like to answer yes, but I would like to make one statement following it, Mr. Donohue. Yes, it would eliminate that, but then I think you would get much more expensive bids. Your Government would not save money because everybody would be predicating their bid on something that they received, and would have no time to make any corrections or get into the —this is merely opinion and I cannot substantiate it anyway—then you are stuck with the full amount and there would be no savings in money.

Mr. DONOHUE. Having in mind this, Captain, that even though a substitute is made within the 5-day period, no benefit would inure to the Government.

Captain BENSON. Yes, sir. There is nothing to keep them from doing it. He can substitute.

Mr. DONOHUE. If a general contractor did it within a 5-day period and by so doing saved money, that saving would not have to be paid back into the Government, as it would if the substitution was made after the 5-day period.

Captain BENSON. That is right.

Mr. LANE. Thank you very much, Captain.

Captain BENSON. Thank you, sir.

Mr. KNOWLES. Mr. Chairman, will an opportunity be given to submit anything for the record that we may wish to submit?

Mr. LANE. Certainly.

Mr. KNOWLES. For how long, 4 or 5 days?

Mr. LANE. That will be all right. Is that time enough for you?

Mr. KNOWLES. I think so.

Mr. LANE. Thank you, Mr. Knowles.

I declare the hearing closed.

(Thereupon at 11:55 a. m., the hearing was concluded.)

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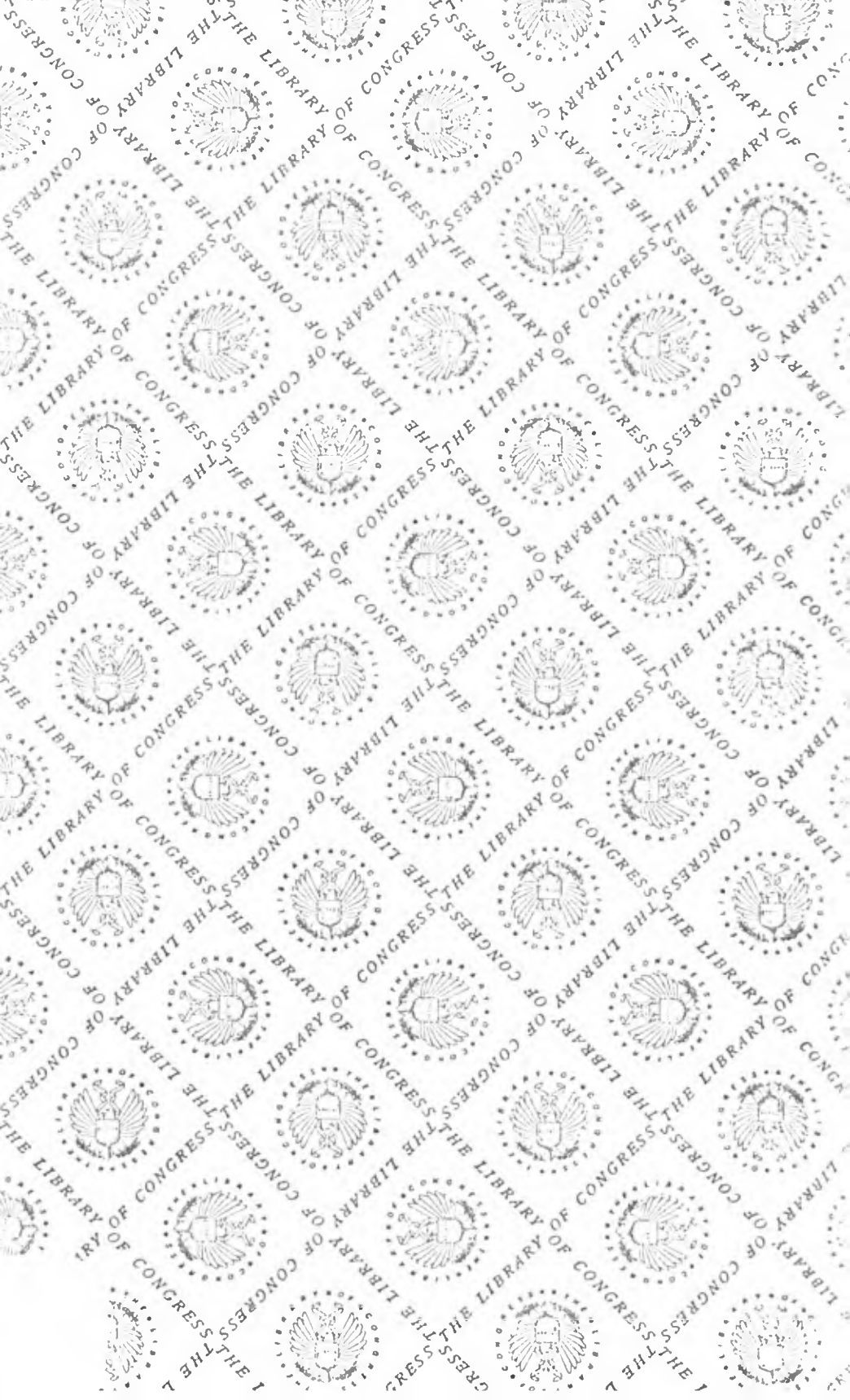
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